Department Of Law

University of Calcutta

Hazra Campus

51/1, Hazra Rd, Ballygunge, Kolkata, West Bengal

700019

• By the Students • Of the Students • For the Students

3RD SEMESTER LEGAL METHODS

Initiated by:

ANANDA BISWAS (GENERAL SECRETARY)

Arranged by:

DIPSHIKHA BHANDARI

ANANDITA NANDY

(JOINT SECRETARIES OF ACADEMIC COMMITTEE)

Circulated by:

MEMBERS OF THE ACADEMIC COMMITTEE

Contact 📞 -

8240421377

+91 93305 15126

Thanks to,

SURYAJYOTI SARKAR

(PRESIDENT)

Courtesy: DEPARTMENT OF LAW, CALCUTTA UNIVERSITY, HAZRA CAMPUS TMCP STUDENT'S UNIT

Table Of Contents

Title	Page no.
1. About the committee……..	2
2. Objectives of the committee……..……......	3
3. Acknowledgement…….…….…….	4
4. Disclaimer……	5
5. Question and Answers……..……	6

About the Committee

The Academic Committee of the Department of Law at the University of Calcutta is a newly formed body established in the month of September, 2024, comprising dedicated students from all 5 years of the BA LLB program. This diverse committee is designed to foster a collaborative academic environment, drawing on the unique perspectives and experiences of its members to enhance the educational journey of the students.

With a total of 12 members, including two Joint Secretaries, the committee operates under the auspices of the Student Unit (TMCP) of Department of Law, University of Calcutta. Its primary mission is to develop comprehensive study materials and notes that cater to the specific needs of law students, ensuring they have access to essential resources for their academic success.

In addition to creating study materials, the committee is committed to provide valuable support through organized online doubt-clearing sessions and compiling lists of important exam questions. By engaging students from various academic years, the committee aims to create a vibrant community that encourages knowledge sharing and academic excellence across all levels of the BA LLB program. Through these initiatives, we aspire to empower students and enhance their understanding of legal concepts, preparing them for both examinations and future careers in law.

Objectives Of the Committee

The Academic Committee of the Department of Law at the University of Calcutta is dedicated to enriching the academic experience of BA LLB students through several key initiatives. A primary focus is developing comprehensive study materials, including high-quality, well-researched notes covering essential topics in the BA LLB curriculum. This ensures students have valuable resources to support effective learning and exam preparation.

To aid examination success, the committee curates and distributes a list of important questions and topics, helping students focus on critical areas and improve performance. Regular online doubt-clearing sessions further support students by providing a platform to clarify course content, ask questions, and engage in discussions on complex legal concepts.

The committee also emphasizes practical learning through workshops and seminars with legal professionals, offering insights into the legal field and connecting theoretical knowledge to real-world applications. Additionally, fostering a collaborative academic community is a priority, encouraging knowledge sharing and support among students across different years.

Looking ahead, the committee plans to introduce new initiatives such as guest lectures and legal research projects to further enhance the academic experience and prepare students for future careers in law.

Acknowledgement

The Academic Committee of the Department of Law at the University of Calcutta extends its heartfelt gratitude to all those who have supported the establishment and ongoing efforts of this committee. We would like to express our sincere appreciation to the University of Calcutta for providing a conducive environment for academic growth and innovation.

We are especially thankful to the Student Union members, ***Suryajyoti Sarkar*** *(President) and* ***Ananda Biswas*** *(General Secretary) for their unwavering support and guidance, which has been instrumental in facilitating our operations and ensuring that student voices are effectively represented in our initiatives.*

We also appreciate the enthusiasm and commitment shown by our Committee Secretaries - ***Anandita Nandy and Dipshikha Bhandari*** *of 7th Semester and Executive Members – 9th Semester-* ***Ridhikamini Basu Mallick,*** *7th Semester -* ***Ritisha Majumder, Maitreyee Roy****, 5th Semester -* ***Anu Mondal, Manami Pramanick, Supriti Murmu****, 3rd Semester –* ***Diksha, Krishna Thakur, Pragya Shukla, Arkodyuti Pramanick, Debapriya Dutta*** *in working collaboratively to enhance the academic environment for law students. Together, we aim to create a vibrant learning atmosphere that prepares students not only for examinations but also for their future careers in law.*

Disclaimer

The notes mentioned in the pdf are prepared for assistance of students in the Department of Law, Calcutta University. They are aimed at supplementing the efforts of students. Students are sincerely advised to attend classes and study by themselves, using these notes only as a means of reference to enhance their knowledge for examinations. This Committee does not condone missing classes or forsaking of own research for academic purposes.

1. Define the term ‘Law’ with the help of definitions provided by various Jurists. What are the important functions and purposes of Law?

The word 'law' is derived from an old Teutonic root '***lag***' which means ***something which lies fixed or evenly***. The problem of the definition of law is as old as Greek and Roman philosophy itself. There has been conflicting and divergent views of the jurists regarding the nature, concept, basis and functions of law. The term 'law' means and includes different things in different societies. The corresponding word for the term 'law' in Hindu system is 'Dharma' or 'Vidhi', in Islamic system it is 'Hukum', in Roman it is 'jus', in French it is 'Droit' and in German it is 'Richt'. These words convey different meanings and ideas. So, it can be said that law can never be properly defined.

- ***Blackstone*:** Law in its most general and comprehensive sense signifies a rule of action and is applied indiscriminately to all kinds of actions, whether animate or inanimate, rational or irrational. Thus, we say the laws of Gravitation, or optics or mechanics, as well as the laws of nature and of nations.
- ***Woodrow Wilson*:** Law is that portion of established thought and habit which gained distinct and formal recognition in the scope of uniform rules backed by the authority and power of the government.
- ***Roscoe Pound*:** Law is a tool of social engineering, a means to fulfill the needs of society and maintain social order.
- ***John Austin*:** A law is a command issued by a sovereign backed by a sanction.
- ***Salmond*:** Law is the body of principles recognized and applied by the state in the administration of justice.
- ***Oliver Wendell Holmes*** stated – “Law is a statement of the circumstances in which public force will be brought to bear upon through courts.”
- ***Benjamin Nathan Cardozo*** who stated “A principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged, is a principle or rule of law.”

- According to ***Gray,*** "the Law of the State or of any organized body of men is composed of the rules which the courts, that is the judicial organ of the body lays down for the determination of legal rights and duties.
- ***John Erskine*** definition of law: Law is the command of a sovereign, containing a common rule of life for his subjects and obliging them to obedience.
- ***Ihering*** defines law as 'the form of Guarantee of the conditions of life of society, assured by state's power of constrain. He says law is a means to an end and end of the law is to serve its purpose which is social not individual.
- ***Hans Kelsan's*** definition of Law: According to Kelsan legal order is the hierarchy of the norms, every norm derive its validity from the superior norm and finally there is highest norm known as grundnorm.
- ***H.L.A.Hart***: According to Hart Law is the combination of primary rules of obligations and secondary rules of recognition
- ***Dias's*** Definition of law - Law consists largely of "ought" (normative) Propositions prescribing how people ought to behave the "ought" of laws are variously dictated by social, moral, economic, political and other purposes.

The law plays a vital role in maintaining the structure and functioning of society. Below are the important functions and purposes of law:

1. **Maintaining Order and Stability**: One of the primary purposes of law is to maintain public order and social stability by establishing norms and expectations. This helps in reducing conflicts and maintaining peace in society.
2. **Protecting Individual Rights and Liberties**: Laws safeguard the fundamental rights and freedoms of individuals, such as the right to life, liberty, and property. Laws ensure that these rights are protected from infringement by others, including the state.
3. **Dispute Resolution**: Law provides a structured mechanism for resolving conflicts and disputes, whether they arise between individuals, organizations, or the government. Courts serve as impartial bodies that resolve disputes based on legal principles.
4. **Ensuring Justice and Fairness**: Law is meant to ensure fairness in society. It ensures that justice is administered impartially and that individuals are treated equally before the law, without bias or discrimination.

5. **Regulating Social Behavior**: Laws set standards of behavior for members of society. They regulate interactions between individuals, ensuring that people act within acceptable boundaries. Criminal and civil laws help deter harmful or unethical behaviors.
6. **Providing Security and Protection**: Law protects individuals from harm and ensures personal safety. This includes protection from physical harm, fraud, or injustice. The enforcement of laws such as those against violence, theft, and corruption provides a secure environment for individuals and businesses to flourish.
7. **Facilitating Social Change**: Law can also be a tool for social change, influencing and shaping societal values and norms. Through legislative action, laws can adapt to changing social, cultural, and economic conditions.
8. **Regulatory Function**: Law regulates the behavior of individuals, groups, and institutions within society. It prescribes acceptable and prohibited behaviors and helps maintain order.
9. **Protective Function**: Law serves to protect individuals and society from harm, whether from criminal acts, breaches of contract, or unfair treatment. This function includes both physical protection (e.g., criminal laws) and protection of rights (e.g., constitutional rights).
10. **Dispute Settlement**: Law offers a formal mechanism to resolve disputes between parties, whether it is civil, criminal, or commercial. The judicial system plays a crucial role in this function, ensuring that conflicts are resolved according to established legal principles.
11. **Enforcement Function**: For law to be effective, it must be enforced. This involves the application of sanctions or penalties for violations. Law enforcement agencies, such as the police, are responsible for ensuring that laws are followed and violations are penalized.
12. **Social Control**: Law serves as a mechanism for social control, setting boundaries for acceptable behavior and enforcing conformity to social norms. This helps in maintaining harmony and preventing deviant behavior.
13. **Educative Role**: Law helps educate the public about their rights and duties. Through legal frameworks, individuals are made aware of the consequences of unlawful behavior and the importance of adhering to societal rules.

In summary, law plays an essential role in regulating and structuring society, ensuring justice, maintaining order, and facilitating peaceful coexistence. Its functions help preserve individual freedoms, protect rights, resolve disputes, and adapt to societal changes.

2. Briefly discuss the basic sources of Law. Discuss the importance of precedents as a source of Law. What is the applicability of Precedents in India? Discuss the importance of Custom as a source of Law. What are the different kinds of customs?

According to ***Gray,*** source means the raw materials both statutory and traditional, from which judges derive the grounds for deciding the cases brought before them.

Gray listed five sources :–

(1) Acts of legislative organs,
(2) Judicial precedents,
(3) Opinions of experts,
(4) Customs, and
(5) Principles of morality including axioms of public policy.

According to ***Salmond***, sources of law can be classified as either legal or historical. The former are those sources which are recognized as such by the law itself. The latter are those sources lacking formal recognition by law.

In modern day the most prominent sources of law include-

1. **Customs (Customary Law)**:

Customs are long-established practices or traditions that have been followed by a community or society. In some legal systems, customs become recognized as law when they are widely accepted and consistent over time. These practices can be unwritten and are often based on historical usage. In some jurisdictions, customary law can influence or even form part of the legal system, especially in areas where no formal legislation exists.

2. **Precedent (Case Law)**:

Precedent refers to the legal principle established in previous court decisions. In common law systems, courts rely on prior judicial decisions to guide future cases involving similar facts or

legal issues. This system of law, known as **stare decisis**, ensures consistency and predictability in the legal process. A higher court's decision is binding on lower courts in the same jurisdiction.

3. **Legislation (Statutory Law)**:

Legislation refers to laws that are formally enacted by a governing body such as a parliament, congress, or assembly. These statutes are written laws that address specific areas of public policy, regulate behavior, or create legal obligations. Legislation is a primary source of law in most modern legal systems and is generally intended to be clear and precise.

4. **Codification**:

Codification is the process of compiling and systematizing existing laws into a single written code. This can include areas like civil law, criminal law, or commercial law. A code consolidates various statutes and legal principles into a coherent, comprehensive body of law. For example, the **Civil Code** in many countries provides a clear set of rules governing private relations between individuals. Codification aims to make the law more accessible, consistent, and transparent.

5. **Conventional Law**:

Conventional law refers to laws that are established through formal agreements or treaties between parties (typically countries or international organizations). These agreements can cover a wide range of subjects, such as trade, human rights, environmental protection, and military conduct. **Conventions** are a source of **international law**, and once adopted, they can influence domestic law as well, depending on the jurisdiction's approach to international treaties.

Together, these sources provide the legal framework in which societies operate, offering both written rules and unwritten traditions to guide behavior and resolve disputes.

Importance of Precedents as Law

A precedent means a previous instance or case which is or may be taken as an example or rule for subsequent cases. In common parlance it means something said or done that may serve to

authorize or justify further acts of the same or a similar kind. It has been defined by the Oxford Dictionary as "a previous instance or case which may be taken as an example or rule for subsequent cases, or by which similar act or circumstances, may be supported or justified". In other words, precedent means judgment or decision of a court of law cited as an authority for the legal principles embodied in it.

Precedent, or **case law**, is a fundamental source of law in common law systems. It refers to the principle that courts follow the decisions made in previous cases, especially when those decisions involve similar facts or legal issues. Precedent ensures that the law is applied consistently and predictably, contributing to legal stability. It is central to the doctrine of **stare decisis** and is guided by the **ratio decidendi** of prior judgments.

1. **Doctrine of Stare Decisis**

   The doctrine of **stare decisis** means that once a court has decided a particular issue, that decision should generally be followed in future cases with similar facts or legal questions. The law of precedent is based on the doctrine of stare decisis which is derived from the maxim *"Stare decisis et non-quieta movere"* which can be described as *"to stand by the decisions and not to disturb settled rules"*. With regards to the application of stare decisis, the Supreme Court in the case of ***Waman Rao v. Union of India***[1] held that a principle that has been applied in decisions by the earlier courts can be directly followed by the courts in subsequent cases and there is no need to determine the rationale upon which such principle was built. This promotes legal certainty and helps individuals and businesses to plan their affairs according to established legal principles. Higher courts' decisions bind lower courts within the same jurisdiction.

   For example, in ***Donoghue v. Stevenson (1932)***,[2] the House of Lords established the modern law of negligence, determining that manufacturers owe a duty of care to consumers. This principle, once established, has been followed in countless negligence cases since.

2. **Ratio Decidendi and Obiter Dicta**

[1] (1981) 2 SCC 362
[2] [1932] AC 562

In every judicial decision, the **ratio decidendi** is the legal reasoning or principle that forms the basis for the court's decision. This is the binding part of the judgment, which must be followed in subsequent cases. In an ordinary sense, we refer to as ratio the reason behind the decision but actually, it is much more than that. The reason in this regard is not merely applying the law to the facts and coming up with an order. Ratio instead refers to the steps that are involved to resolve a dispute, this resolution must be directly related to the issue or issues that are at the core of the dispute at hand. It must come from disputes of law, not disputes of fact. Ratio Decidendi must be argued in court and the facts of the precedent case shape the level of generality to which the later courts decide the level of generality. Ironically when a precedent has multiple reasons, all reasons are binding. Ratio becomes a very powerful tool in the hands of a lawyer and that is why it becomes essential for him to comprehend it well. To find the ratio in a judgement one looks at the abstract principles of law that have been applied to the facts of that particular case. In the case of ***B. Shama Rao v. UT of Pondicherry,***[3] it was observed that any of the decisions of a court which is binding as a precedent is not because of the end result or the order of that decision but based on the reasons and principles referred to in such a decision. The ratio in deciding a case would evolve from the interpretation of a statute, principles of natural justice, and the common law principles.

On the other hand, **obiter dicta** refer to comments made by the judge that are not central to the decision and do not have binding authority. Statements that are not crucial and refer to hypothetical facts or issues of law not related to the case also form a part of obiter dicta in a judgement. Unlike ratio, obiter is not the subject of the judicial decision even if the statements made in this part are correct according to law. ***Wambaugh***'s Inversion Test provides that to determine whether a judicial statement is ratio or obiter, you should invert the argument, that is to say, ask whether the decision would have been different, had the statement been omitted. If so, the statement is crucial and is ratio; whereas if it is not crucial, it is obiter. In the case of ***Sarwan Singh Lamba v. Union of India,***[4] the SC observed that in general circumstances, even the obiter dictum mentioned in a decision of the court is expected to be followed. Moreover, the Supreme Court's obiter dictum

[3] 1967 SCR (2) 650
[4] 1995 SCC (4) 546

carries a considerable weightage. But such weightage depends upon the kind of dictum given by the court. If the dictum is a casual remark by the court, it does have any effect on the parties or the subsequent cases. In another scenario, certain obiter dicta have recommendatory or persuasive value but do not bind anyone. Hence, the ratio decidendi is an important constituent of judgment rather than obiter dicta.

A decision of the higher courts like the Supreme Court and the High Courts generally sets a precedent for the Courts that are directly below them in terms of jurisdiction. Ratio, because it sets an underlying principle in the judgement, forms a vital part in a judicial precedent. Judicial precedents form one of the most noteworthy sources of law as they are often quoted and followed by the lawyers and judges during the course of arguing cases. The precedents however differ in value depending on not only the hierarchy and strength of the bench but also depending on the reverence that a judge who pronounces the judgement possesses in the legal fraternity. The doctrine of precedent finds itself embedded in the Constitution of India by virtue of Article 141 which states that the law declared by the Supreme Court is binding on all the subordinate courts. It does not matter as to what the facts and circumstances of a particular case are; the lower courts are not permitted to overrule the law that has been declared by the Supreme Court. Trouble emerges in that, in spite of the fact that the judge will give reasons behind his judgment, he won't generally say what the ratio decidendi is, and it is then up to a later judge to "elicit" the ratio of the case. There may, in any case, be contradiction over what the ratio is and there might be in excess of one ratio.

Precedent, as a source of law, ensures consistency, fairness, and predictability in legal decision-making. Through the doctrines of **stare decisis** and **ratio decidendi**, the courts create a body of law that is applied to future cases. However, the law can evolve, and courts have the power to overturn or distinguish earlier precedents when necessary to reflect changes in societal values or legal reasoning, as demonstrated in cases like ***Brown v. Board of Education***[5].

Applicability of Precedents in India

[5] 347 U.S. 483 (1954)

In India, **precedent** is an essential source of law, particularly in the context of the **doctrine of stare decisis**, which mandates that courts should follow the decisions made by higher courts in previous cases. This ensures consistency, stability, and predictability in the legal system. However, the applicability of precedent in India is governed by specific rules and exceptions, as defined by the Indian legal system and the Constitution.

- **Role of Precedents in Indian Legal System**

India follows the **common law system**, inherited from British colonial rule. Under this system, the judgments of higher courts—especially the **Supreme Court of India**—serve as authoritative precedents. The decisions of the Supreme Court are binding on all lower courts in the country, including the High Courts and subordinate courts, ensuring uniformity in the interpretation of laws.

- **Doctrine of Stare Decisis in India**

The doctrine of **stare decisis** plays a pivotal role in Indian jurisprudence. It ensures that the legal principles established by higher courts are followed by lower courts in subsequent cases. This prevents arbitrary decision-making and helps to maintain legal stability.

  - **Article 141 of the Indian Constitution**: This article explicitly states that the law declared by the **Supreme Court of India** is binding on all courts within the territory of India. This means that the Supreme Court's decisions serve as binding precedents for all other courts in India.
  - **Article 144 of the Indian Constitution**: This article requires that all authorities, including the executive and legislature, act in accordance with the Supreme Court's judgments.

Thus, judgments of the Supreme Court are **binding** on lower courts, and those of High Courts are binding on subordinate courts within the same jurisdiction.

- **Precedents of the Supreme Court**

The **Supreme Court of India** has the authority to create binding precedents for the entire country. When the Supreme Court delivers a judgment, it lays down legal principles that are followed by all courts in India.

For example, in ***Kesavananda Bharati v. State of Kerala (1973)***,[6] the Supreme Court laid down the **basic structure doctrine**, asserting that certain features of the Constitution cannot be altered by amendments. This judgment has had a significant impact on constitutional law in India.

- **Precedents of High Courts**

The **High Courts** of India have jurisdiction over their respective states or territories, and their decisions are binding on lower courts within that jurisdiction. However, the High Court's decisions are not binding on other High Courts, although they can be persuasive. If different High Courts interpret the law differently, the issue can be settled by the Supreme Court.

- **Overruling or Distinguishing Precedent**

The Indian legal system allows the Supreme Court and High Courts to **overrule** or **distinguish** existing precedents in certain situations. The courts may overrule a precedent if it is deemed incorrect or outdated. This reflects the **evolving nature of law** and allows the legal system to adapt to societal changes.

  - For example, in ***Shah Bano Case (1985)***,[7] the Supreme Court overruled the traditional view on **maintenance under Muslim law** and declared that Muslim women have the right to alimony under the Indian law. However, this decision was later effectively overturned by the Muslim Women (Protection of Rights on Divorce) Act, 1986, due to societal and political pressures.

[6] AIR 1973 SUPREME COURT 1461
[7] Mohd. Ahmed Khan vs Shah Bano Begum and Ors AIR 1985 SUPREME COURT 945

- In ***Minerva Mills Ltd. v. Union of India (1980)***,[8] the Supreme Court **overruled** earlier precedents that had allowed Parliament to make changes to the Constitution, stating that fundamental rights cannot be altered.

- **Binding Nature of Precedents**

  Precedents are binding on lower courts, but **obiter dicta**—statements made by the judges that are not essential to the judgment—are not legally binding. However, **obiter dicta** can be persuasive and may influence future decisions if they are considered well-reasoned or significant.

In some cases, the Supreme Court may also refer to **foreign precedents** (judgments from other common law jurisdictions such as the UK or the US), though these are not binding. They may be used as persuasive authority, especially when the Indian legal issue at hand is similar to one already addressed in another country.

CUSTOM -

Custom is an important source of law and it is desirable to define the same. Custom has been defined by various jurists as per their notion, understanding, philosophy, views and opinion. The different jurists also defined custom on the basis of source, validity, practice, history &utility. Some of the important definitions of custom are as follows:

1. ***Salmond:*** - According to Salmond, "custom is the embodiment of those principles which have commended themselves to the national conscience as principles of justice and public utility".
2. ***Austin:*** - According to Austin, "custom is a rule of conduct which the governed observe spontaneously and not in a pursuance of law set by a political superior".
3. ***Allen:*** - According to Allen, "custom as a legal and social phenomenon grows up by forces inherent in society, forces partly of reason and necessity and partly of suggestion and limitation."
4. ***Holland:*** - He defined custom as "a generally observed course of conduct."

[8] 1981 SCR (1) 206

Custom is a habitual course of conduct observed uniformly and voluntarily by the people. Custom occupies an important place in regulation of human conduct in almost all the societies. In fact, it is one of the oldest sources of law-making. But with progress of the society custom gradually diminish and legislation and judicial precedents become the main source. Custom is created by the people, by their unconscious adoption of a certain rule of conduct whenever the same problem arises for solution and its authority is based on nothing but its long-continued use and recognition by the people. Custom is some kind of special rule which is followed from time immemorial. Law based on custom is known as customary law. Custom, as a source of law, involves the study of a number of its aspects: its origin and nature, its importance, reasons for its recognition, its classification, its various theories, its distinction with prescription and usage, and the essentials of a valid custom.

Requisites of Custom as a Source of Law

Customary law is established not by legislator or professionally trained judges but by popular practice.

i. Antiquity

In order that a custom may have the force of law, it is necessary that should be ancient or immemorial. According to **Blackstone**, "a custom in order that it may be legal and binding, must have been used so long that the memory of man runneth not to the contrary. So that if anyone can show the beginning of it, it is not good custom". Here time immemorial means time so remote that no living man remembers its origin or can give evidence concerning it. Thus, custom is immemorial when its origin is so ancient that the beginning of it is beyond human memory, so that no testimony is available as to a time when it did not exist.

ii. Reasonableness

A custom should not be unreasonable, i.e., it must be reasonable in its application to the circumstances of the individual cases. It must be useful and convenient to the society. Unreasonable customs are void. The unreasonableness of a custom must be so great that its

enforcement results greater harm than if there were no custom at all. A custom, therefore, should not be repugnant to reason.

iii. Exercised as a Right or compulsory observance

A custom to be valid must have been observed as a right. It must have been followed openly. It must have an obligatory force and must have been supported by the general public opinion. Therefore, a custom to operate as source of law must be supported by opinion necessitates. It must be regarded by those affected by it not merely as a facultative or optional rule, but as an obligatory or binding rule of conduct. If a practice is left to individual choice it can have no claim to recognition as customary law. Before accepting a custom as a binding source of law the Court should be satisfied that the custom is crystallized into the unmistakable conviction of the community as to the rights and obligations of its members towards one another.

iv. Not opposed to Statutory Law

A valid custom must not conflict with the statute law of the country. According to ***Coke***, "no custom or prescription can take away the force of on Act of Parliament It is a positive rule in most of the legal systems that a statute can abrogate a custom in case of conflict between their applications. An Act of legislature may even expressly provide that it is subject to any custom to the country. Thus, *Section 1* of the Indian Contract Act provides, "nothing herein contained shall affect....any usage or custom of trade....".

Thus, custom cannot abrogate a newly enacted legislation. For example, among the Hindus, all the customary forms of marriage, adoption, succession of property have been abrogated by the newly enacted legislation concerning such issues. Similarly, the custom of child marriage and usage of dowry has no legal force in modern India.

v. Peaceable enjoyment

The custom must have been enjoyed peaceably. If a custom is in dispute for a long time in a law court, or otherwise, it negatives the presumption that it originated by consent as most of

the custom naturally might have originated. Therefore, if the enjoyment of a custom is not peaceable one, consent is presumed to be wanting in it.

vi. Certainty

A valid custom must be certain and definite. A custom which is vague or indefinite cannot be recognized. In this context it would be pertinent to refer to the case of ***Guruswamy Raja vs. Perumal***.[9] In this case the plaintiff claimed a customary right of easement for the shadow falling from the branches of the trees hanging from the neighbour's field. Mr. Justice Pandalai of the High Court of Madras ruled that there cannot be a custom relating to shadow of trees because it is so uncertain, ambiguous and transitory that cannot give rise to any customary right.

vii. Consistency

There must be consistency between the prevailing customs. A particular Custom must not come into conflict with the other established customs. Besides in case of conflict between existing customs, it will create confusion the minds of the people as well as in the mind of the court that which one to follow.

viii. Continuity

The custom should be continuously in practice without any interruption from time immemorial. If a custom has not been followed continuously and uninterruptedly for a long time, the presumption is that never existed at all. In England, it is essential that the custom should not have been abandoned at any time after 1189, and then re-continued.

The fact that a custom has not been exercised for a long period may be reason for doubting its existence though it does not necessarily mean that custom has ceased to exist. Where a custom is proved to exist, it must be held to continue and the onus of proving the discontinuance or that the custom had fallen into desuetude lies upon the party asserting it

[9] AIR 1929 MAD 815

ix. Not contrary to Justice, Equity and Public Policy

A custom to be valid must not contrary to justice, equity or good conscience or opposed to public policy.

x. Not Immoral

A custom to be valid must not be immoral. There is, however, no fixed test to judge the morality of a custom. Whether a custom is immoral is to be judged by the sense of the community. In ***Mathura Naikin vs. Esu Naikin***,[10] the Bombay High Court has held that the profession of dancing girls was immoral and the custom of adoption of girls by them for the same immoral purpose is illegal as it was designed to perpetuate this profession Likewise, the custom permitting marriage with daughter's daughter has also been held immoral.

Customs, in their various forms, can shape the legal systems of countries and societies. In many legal traditions, particularly in common law and certain civil law jurisdictions, customary law has been recognized as an important source of law, especially in areas where no statutory law exists. The different types of customs reflect the diversity of practices that develop in response to specific needs, values, and traditions within a society or community.

Kinds of Customs

All customs which have the force of law are of two kinds which are essentially distinct in their mode of operation. There are two kinds of custom legal and conventional.

a. Legal Custom

According to ***Salmond,*** a legal custom is one whose legal authority is absolute one which in itself possesses the force of law. Such customs are operative per se as a binding rule of law, independently of any agreement on the part of those subject to it. It is the product of the will of the people and is based on national character, notion of justice and on the opinion the people and is accepted and recognized judicially by the law courts. Legal customs are ones which are not set

[10] (1912) 14 BOM LR 1129

down in any written statutes or ordinance but depend merely upon immemorial usages, that is, upon common law their support. The rule of pre-emption in Mohammedan Law is an example of legal custom. Legal custom can be further subdivided into two-local and general customs. Legal custom which prevails in some definite locality only constitutes a source of law for that place only, is known as Local Custom Thus, a local custom is one which prevails in a particular community of locality or a section of people or a part of a locality, e.g., caste, district and region, etc. it is one which must be pleaded with particularity as to the limits of the area of which it is alleged to be the custom and evidence must be given as to the prevalence of that custom in that area.

On the other hand, legal custom which is observed by all the members of a society is a General Custom. In other words, general custom is the custom prevailing throughout the entire realm, and not limited to any locality, but apply generally to a class of persons. For example, in Punjab there is a general custom that the daughter succeeds to the self-acquired property of her deceased father in preference to the collaterals. General custom should not be contrary to statute law of the land. However, general custom is now no longer a living and operative source of law.

b. Conventional Custom

According to ***Salmond***, a conventional custom is one whose authority is conditional on its acceptance and incorporation in agreements between the parties to be bound by it. Thus, conventional customs are those usages and practices which operate only indirectly through the medium of agreements whereby they are accepted and adopted in individual instances as conventional law between the parties, e.g., the usage of a particular trade or business. Usually, a conventional custom is referred to as usage and legal custom as custom simpliciter.

The development of conventional customs essentially involves three stages.

First, it must be so well-established as to have attained the notoriety of a usage.

The existence of a usage must be proved on the basis of evidence is second stage of development, a conventional custom gets recognition through a judicial decision. At this stage, it assumes the form of a precedent.

After having passed these two stages, the conventional custom is finally accepted as a statutory law after its codification. This is the third stage of development. The law relating to bills of Exchange and most of the provisions of the *Sale of Goods Act* have the origin in the conventional customs and usages which were being followed from times immemorial.

Like a legal custom, conventional custom may be local or general. It may be extensive throughout the realm or it may be limited to a locality. For example, conventional customs or usages in negotiable instruments apply throughout India, but the usages or conventional customs in the case of bills or promissory notes in an oriental language differ in different localities.

There is no doubt about the fact that custom is an important source of law. Broadly, there are two views which prevail in this regard on whether custom is the law. Jurists such as Austin opposed custom as a law because it did not originate from the will of the sovereign. Jurists like Savigny consider custom as the main source of law. According to him the real source of law is the will of the people and not the will of the sovereign. The will of the people has always been reflected in the custom and traditions of the society. Custom is hence a main source of law. E.g., In India Saptapadi is an example of customs as a source of law. It is the most important rite of a Hindu marriage ceremony. The word, Saptapadi means "Seven steps". After tying the Mangalsutra, the newly-wed couple takes seven steps around the holy fire, which is called Saptapadi. The customary practice of Saptapadi has been incorporated in Section 7 of the Hindu Marriage Act, 1955.

Custom was the most important source of law in ancient India. Even the British initially adopted the policy of non-intervention in personal matters of Hindus and Muslims. After independence and the enactment of the Constitution, the Indian Parliament took many steps and abrogated many old customary practices by some progressive legislation. Hindu personal laws were codified and the Hindu Marriage Act, 1955 and the Hindu Adoption Act, 1955, were adopted. The Constitution of India provided a positive environment for these social changes. After independence, the importance of custom has definitely diminished as a source of law and judicial precedent, and legislation has gained a more significant place. A large part of Indian law, especially personal laws, however, are still governed by the customs i. Hindu Personal Laws ii.

Hindu Marriage Act, 1955 iii. Hindu Succession Act, 1956, iv. Hindu Minority and Guardianship Act. 1956 and v. Hindu Adoptions and Maintenance Act, 1956

5. What is civil law or Romeo Germanic System? State its importance in the development of Codified Laws.

Civil law in legal system refers to the laws which are evolved from various legal traditions including Germanic, customary laws etc. These are the primary source of law i.e. featured by written laws, codes and statues.

Civil law system is a broader concept in comparison to Roman-Germanic law system as it a specific type of civil law system which was developed in Germany and gradually emphasized on academic legal scholarship and the use of legal concepts and categories derived from Roman law.

Some key characteristics of civil law or Roman-Germanic System are as follows:

i. **Codified laws** - they are written laws providing a systematic and comprehensive legal framework
ii. **Judicial interpretation** – the Courts primarily rely on the existing laws rather than making new ones. This is also called precedents.
iii. **Inquisitorial system**- the court takes and active part in investigating cases
iv. **The traditions and customs** – these laws are deep rooted with the Germanic traditional laws and customs which make then authentic and justiciable.

With the passage of time the civil law system has proved to be very effective and important for various countries especially in the countries of Europe and Latin America. It has developed from centuries. There is no such research or important document about the same but various political thinkers and jurists have emphasised the importance of civil law in the development of codified laws.

Justinian I in his *Juris Corpus Civilis* laid the foundation of civil law system. It focused mainly on the importance of written laws, codification and the role of state in maintaining order.

Some medieval thinkers in the 11th century like *Glossators*, analysed the *Juris Corpus Civilis* and emphasised on systematic legal reasoning and the role of scholarly analysis in legal interpretation.

Modern thinkers like ***Montesquieu*** in his *Spirit of Laws* discussed the importance of codified laws to ensure clarity, predictability and justice. It also promoted the need for a well-structured legal system to protect individual rights and social order.

Also, ***Jeremy Bentham*** who was associated with utilitarian philosophy also contributed to the legal method. He emphasised the use of codified laws as it provides more clear and concise language to make laws accessible to the public.

Thus, the civil law, or Romano-Germanic, legal system was important in the development of codified laws because it:

- **Provided a basis for codification** : The earliest codification known is the Code of Hammurabi, written in ancient Babylon during the 18th century BC. However, this, and many of the codes that followed, were mainly lists of civil and criminal wrongs and their punishments. The codification typical of modern civilian systems did not first appear until the Justinian Code. The civil law system is based on Roman law, which was codified in the Justinian Code. This provided a foundation for the codification of laws in other countries.

- **Influenced the development of legal codes** : Germanic codes appeared over the 6th and 7th centuries to clearly delineate the law in force for Germanic privileged classes versus their Roman subjects and regulate those laws according to folk-right. Under feudal law, a number of private custumals were compiled, first under the Norman empire (*Très ancien coutumier*, 1200–1245), then elsewhere, to record the manorial—and later regional—customs, court decisions, and the legal principles underpinning them. Custumals were commissioned by lords who presided as lay judges over manorial courts in order to inform themselves about the court process.

  The use of custumals from influential towns soon became commonplace over large areas. In keeping with this, certain monarchs consolidated their kingdoms by attempting to compile custumals that would serve as the law of the land for their realms, as when Charles VII of France in 1454 commissioned an official custumal of Crown law.

- **Led to the rationalization of laws** : Scholars and Enlightenment rulers worked to rationalize laws and create comprehensive legal codes. For example, Austria's Code of Joseph II and Complete Civil Code of 1811, and France's Civil Code of 1804 were all created during this time.

- **Allowed for the incorporation of local customs** : As civil law spread throughout Europe, local customs became increasingly important. For example, the Dutch jurist Hugo Grotius synthesized Roman law and Dutch customary law in his 1631 work, Introduction to Dutch Jurisprudence

In essence we see that civil law as a legal system is very effective and have been followed for centuries, many developed countries still follow the concept of civil law or Roman-Germanic System. It not only helps in help in shaping the law and order but also promotes systematic maintenance of a country especially for the civilians. Also, it has evolved gradually with changing decades with furnished and fine ways.

6. Discuss the origin, development and characteristic features of English Common Law System. What is its effect on Indian Legal System?

English Common Law system is the unwritten or are non-codified laws and they are relied on precedents and case laws.

A. Origin of English Common Law

The English common law primarily originated in England from the reign of ***King Henry II*** (1154-1189). England always had a background of local customs and laws. The Norman Conquest in 1066 brought the concept of centralized legal system along with the King's court namely Curia Regis and became the primary court of law. And now it is used in many countries, especially in the former British colonies.

B. Development

i. After the Curia Regis, the court had expanded to the extent as a name of King's Courts, this means it became the court of Common Pleas and King's Bench which dealt with the

disputes across the kingdom as a whole and judges in the court started to refer previous decisions to guide the rulings.

ii. After this, there came a new concept of Circuit Judges i.e. judges were sent in circuits to different parts of the country to administer fair justice, therefore, unifying the legal principles.

iii. Legal scholars like ***Sir Edward Coke*** played an important role in analyzing various principles and introduced the concept of Stare Decisis. This principle became a cornerstone for the further evolution of the English Common Law. It means "let the decision stand" i.e. the courts are bound to follow the decisions of previous courts in similar cases. This formulated the system of precedent.

iv. These courts and decision-making process of the judges through Stare Decisis brought consistency and predictability in the judgements.

v. The inclusiveness of the judges and the precedent & case laws gave a crucial identity to the jurists and the judiciary as a whole.

vi. It proved to be flexible unlike civil laws, and helped the rules and judgements to suit the existing environment of the society.

C. Characteristic features

i. Stare Decisis:

- This principle simply defines that "let the decision stand" i.e. the decisions taken by the judges & the court will be the final one which civilian are bound to follow in similar cases.
- It includes precedents as well which explains that the lower courts are bound to obey the laws made by the judgements of the higher courts and these are the laws which are to be considered nationwide.

ii. Adversarial system:

- There has to be two parties presenting the case for the concerned legal dispute to an impartial judge or jury.
- Both the parties (prosecutor and defendant) have to present evidences and arguments to convince the court.
- In here the judge or the jury have to be impartial to ensure a fair trial and provide laws to facts presented.

iii. Importance of case laws:

- The case laws or the decisions made by the judges previously in other cases is the only primary source of the law.
- The jury are to interpret the constitutional laws, statutes and regulations through the case laws.
- In some cases where there are no single case laws given by any the jury or judge, they can make new laws in that particular case and it will be considered the new precedent or case law.

iv. Trials of Jury:

- Often the juries are expected to determine the facts of the case.
- In some cases, the juries consist of come people who are expected to be impartial to cross check the facts of the case.

v. Flexibility:

- The English common laws are flexible and easy to adapt new laws into it with the changing social, economic and political structure of the society.
- It also provides a discretionary power to the judges that they can impose laws which are just and equitable.

The effect of English Common Law has a huge impact on the Indian legal system. As India was under the influence of British colonies from 1700s till independence, it left a shadow of common laws in our country and though we have evolved a lot after independence but the judiciary and legislature are consistently followed by our Indian leaders and Assembly members. The irony of all facts is that these common laws are very effective and fruitful for the prevailing justice all over the Indian nation.

Various effects or advantages of English Common Law on Indian Legal System are as follows:

i. Foundation of Indian legal system:

- The British introduced codified laws where they incorporated the principles of English common laws as well.
- They also introduced the concept of Courts in a hierarchy manner where there will be an apex court and under them there will be few subordinate courts where necessary as per the population. They appointed judges and juries as well which latter helped to emphasize on Indian Judicial system.

ii. Principles of Common Laws:

- The principles of common laws like Stare Decisis and Adversarial system played an important role in shaping the judicial system where it gave a fair and impartial notions of the judiciary which latter on helped to be it an independent organ of the government.
- It incorporated the principles from the book of Rule of Law where it promoted that Law is the supreme and is applied equally on everyone. (*Article 14 – Right to Equality*, of the Constitution of India, 1950 is influenced by this principle)

iii. Substantive Laws:

- Substantive laws like Contract Law, Tort Law and Criminal Law are incorporated by the common laws which largely used and impacts the Indian society.

iv. Procedural Laws:

- The Evidence Law, Civil Procedure Code and Criminal Procedure Code are all influenced and incorporated the principles of English common laws.

Therefore, we see that the English Common Law has impacted largely over the Indian Legal System. It has proved to be effective and impactful for the fair and flexible justice foe the common people. India being a newly independent country it needed a strong base of good judiciary and legislature; the British has positively set up the narration of good governance and just decisions by the Courts.

5. What do you mean by interpretation? Discuss the major rules of Interpretation with the help of decided cases. Explain the Golden Rule and Mischief Rule of Interpretation.

Interpretation in the context of law refers to the process of determining the meaning of legal texts, such as statutes, regulations, contracts, and constitutional provisions. The role of interpretation is crucial because laws are often written in general terms, and their application may require judicial clarification. Judges interpret these laws to ensure that they are applied correctly in specific cases.

Legal interpretation is necessary to resolve ambiguities, inconsistencies, or unclear language within legal texts. It helps in ensuring that the intent of the law is fulfilled, keeping in mind its objectives and purpose.

Major Rules of Interpretation:

There are several established rules of interpretation that judges use to interpret legal texts. These include:

1. **Literal Rule**:

   It is the first rule of interpretation. According to this rule, the words used in this text are to be given or interpreted in their natural or ordinary meaning. After the interpretation, if the meaning is completely clear and unambiguous then the effect shall be given to a provision of a statute regardless of what may be the consequences. The basic rule is that whatever the intention legislature had while making any provision it has been expressed through words and thus, are to be interpreted according to the rules of grammar. It is the safest rule of interpretation of statutes because the intention of the legislature is deduced from the words and the language used. According to this rule, the only duty of the court is to give effect if the language of the statute is plain and has no business to look into the consequences which might arise. The only obligation of the court is to expound the law as it is and if any harsh consequences arise then the remedy for it shall be sought and looked out by the legislature.

   - **Case**: ***R v. Judge of the City of London Court (1892)*:**[11] The court held that if the words of the statute are clear, they must be given their plain meaning, even if the result may seem unjust or absurd.
   - State of ***Kerala v. Mathai Verghese and others***,[12] in this case a person was caught along with the counterfeit currency "dollars" and he was charged under section 120B, 498A, 498C and 420 read with section 511 and 34 of Indian Penal Code for possessing counterfeit currency. The accused contended before the court that a charge under

[11] [1892] 1 QB 273
[12] 1987 AIR 33 SCR(1) 317

section 498A and 498B of Indian Penal Code can only be levied in the case of counterfeiting of Indian currency notes and not in the case of counterfeiting of foreign currency notes. The court held that the word currency notes or bank note cannot be prefixed. The person was held liable to be charge-sheeted.

2. **Golden Rule**:

The **golden rule** is a modification of the literal rule. It allows a judge to depart from the literal meaning of a word or phrase when its application would lead to an absurdity or an unjust result. The aim is to ensure that the interpretation of the law does not produce an unreasonable or contradictory outcome. Whenever there is a shadow of skepticism casted on the grammatical construction of any law then in such circumstances, the golden rule of interpretation can be applied on the law in order to apply it to the facts in a legal dispute. The external manifestation of the underlying law which is interpreted from reading between the lines projects the true intent of the legislature for which the golden rule is used. By taking into consideration the consequences of the judgement, the judges have the discretion to interpret the law in a rational manner.

- **Case**: ***R v. Sigsworth (1935):***[13] In this case, the court applied the golden rule to interpret the word "issue" in a statute. The defendant was a son who had murdered his mother. The statute disinherited "issue" who were convicted of murdering their parent. The court held that the term "issue" should not apply to someone who had murdered the parent, as it would lead to an absurd result.

3. **Mischief Rule**:

- The **mischief rule** focuses on determining the "mischief" or defect that the statute was intended to remedy. Mischief Rule was originated in Heydon's case in 1584. It is the rule of purposive construction because the purpose of this statute is most important while applying this rule. It is known as Heydon's rule because it was given by Lord Poke in Heydon's case in 1584. It is called as mischief rule because the focus is on curing the mischief.

[13] 1935] Ch 89

In the Heydon's case, it was held that there are four things which have to be followed for true and sure interpretation of all the statutes in general, which are as follows-

- What was the common law before the making of an act.
- What was the mischief for which the present statute was enacted.
- What remedy did the Parliament sought or had resolved and appointed to cure the disease of the commonwealth.
- The true reason of the remedy.

In this approach, judges look beyond the literal words and consider the problem that the law sought to address at the time of its enactment. This rule allows for a broader interpretation based on the purpose or intent of the legislation.

- **Case**: ***Smith v. Hughes (1960)*:**[14] In this case, the court applied the mischief rule to interpret the Street Offences Act 1959. The Act made it an offense for a woman to solicit prostitution in a public place. The defendants were women who solicited men from balconies, which were not strictly "public places." However, the court interpreted the statute using the mischief rule and held that the intent of the statute was to prevent street solicitation, regardless of whether it occurred on a balcony or in the street.

4. **Harmonious Construction**:

- The rule of **harmonious construction** refers to interpreting legal provisions in such a way that they do not conflict with one another but are instead read in a manner that gives effect to all provisions. According to this rule of interpretation, when two or more provisions of the same statute are repugnant to each other, then in such a situation the court, if possible, will try to construe the provisions in such a manner as to give effect to both the provisions by maintaining harmony between the two. The question that the two provisions of the same statute are overlapping or mutually exclusive may be difficult to determine.

  The legislature clarifies its intention through the words used in the provision of the statute. So, here the basic principle of harmonious construction is that the legislature could not have

[14] 1960 WLR 830,

tried to contradict itself. In the cases of interpretation of the Constitution, the rule of harmonious construction is applied many times. It can be assumed that if the legislature has intended to give something by one, it would not intend to take it away with the other hand as both the provisions have been framed by the legislature and absorbed the equal force of law. One provision of the same act cannot make the other provision useless. Thus, in no circumstances, the legislature can be expected to contradict itself.

- Case : ***Ishwari Khaitan Sugar Mills v. State of Uttar Pradesh,***[15] in this case, the State Government proposed to acquire sugar industries under U.P Sugar Undertakings (Acquisition) Act, 1971. This was challenged on the ground that these sugar industries were declared to be a controlled one by the union under Industries (Development and Regulation) Act, 1951. And accordingly, the state did not have the power of acquisition of requisition of property which was under the control of the union. The Supreme Court held that the power of acquisition was not occupied by Industries (Development and Regulation) Act, 1951. The state had a separate power under Entry 42 List III.

5. **Purposive Approach**:

   This rule interprets a statute in a way that gives effect to the purpose or objective of the law. It involves considering not just the wording but also the overall purpose or intention behind the legislation.

   - **Case**: ***Fothergill v. Monarch Airlines Ltd (1981)*:** [16]The House of Lords used the purposive approach to interpret the scope of a statute relating to the international carriage of passengers. The court considered the purpose of the statute, which was to provide protection for passengers, and ruled in favor of the plaintiff.

6. **Ejusdem Generis Rule**:

[15] 1980 SCR (3) 331
[16] [1980] 2 All ER 696

This rule is applied when a general term follows a list of specific terms. The rule suggests that the general term should be interpreted in a way that is consistent with the specific terms listed before it.

- **Case**: ***A.G. v. Prince Ernest Augustus of Cumberland (1957):***[17] The court applied this rule to a statute which mentioned "dogs, cats, and other animals." The court ruled that "other animals" should be interpreted as animals similar to dogs and cats.

7. **Expressio Unius Est Exclusio Alterius**:

This rule suggests that the expression of one thing implies the exclusion of others. If a statute explicitly lists certain items, other unlisted items are excluded.

- **Case**: ***Inland Revenue Commissioners v. Frere (1965):***[18] The court applied this principle to interpret a tax statute. The statute listed specific types of income subject to tax, and the court held that income not listed was not taxable.

Golden Rule of Interpretation:

The golden rule of interpretation was propounded in the case of ***Grey v. Pearson***[19] by Lord Wensleydale in the year 1857. This is why it is also known as Wensleydale's Golden Rule. This rule is the modification of the literal rule. The golden rule modifies the language of the words in a statute to successfully interpret the actual meaning of the legislation. It takes into account the context in which the words are used so that justice can be done to the intention of the legislation. It is to be noted that the rule can be used only when the language of the statute is ambiguous or grammatically incorrect. Thus, the judges need to be extremely careful with their interpretation and only exercise this power when it is absolutely necessary.

The golden rule can be applied in a narrow or a broad sense:

[17] [1957] 1 All ER 49; [1957] A.C. 436
[18] 1964 3 WLR 1193
[19] (1857) 10 ER 1216

- **Narrow approach** – This approach is taken when the words in the statute are capable of multiple interpretations. Through this approach, the judge is able to apply the meaning which is clear and properly portrays the true intention of the statute. This approach was used in the ***R v. Allen, (1872)***[20] case.
- **Broad approach** – This approach is taken when there exists only one possible interpretation of a word. In some cases, the meaning might cause absurdity. In order to avoid this problem, the judges can use this approach to modify the meaning of the word but this modification should be limited and shouldn't deviate from the actual intention of the legislation. In ***Re. Sigsworth: Bedford v. Bedford (1954)***[21], this approach was used.

The golden rule of interpretation is the second step after the literal rule. As we've discussed, the literal rule would apply only when the plain meaning of the word gives justice to the intention of the legislation. When the literal rule fails due to the existence of multiple meanings of a word in the statute, the golden rule is to be applied.

The analysis of Golden Rule can be divided into five categories as discussed below:

- **WARBURTON'S CASE**

Explaining the principle underlying the Golden rule, Justice Burton in the case of *Warburton v. Loveland* observed that in the very first instance of application of law the grammatical sense of the wordings of law must be paid heed. But if there is involvement of any absurdity, inconsistency, or is against the declared purpose of the statute then in such circumstance, the grammatical sense of the law can be modified or interpreted so far as there is no injustice caused to the parties of the case. Even though the elementary rule of interpreting the words as it is in their grammatical sense has been upheld by the courts in numerous cases like ***Madan Lal v. Changdeo Sugar Mills,***[22] the courts should still be open to various interpretations of the law so that no injustice is caused. This well-known rule was strictly formulated by Parke B. in the case of ***Becke v. Smith*** [23]wherein it was held that, the wordings of the law which are unambiguous

[20] (1872) LR 1 CCR 367
[21] 274 S.W.2d 528 (1954)
[22] 1962 SCR SUPL. (3) 973
[23] (1836) 2 M & W 191

and plain nature should be construed in their regular sense even though, if in their assessment it is absurd or promotes injustice. We assume the function of the legislature when we deviate from the ordinary meaning of the statute due to which from the adherence to its literal meaning we prevent the manifestation of injustice.

- **LORD WENSLEYDALE'S GOLDEN RULE**

The term golden rule was coined by Lord Wensleydale which was later adopted in the case of ***Gray v. Pearson*** due to which it is primarily called the Lord Wensleydale's Golden Rule of Interpretation. Lord Wensleydale expressing this opinion of the rule, mentioned that he is deeply awestruck with the perception of the rule which is being universally accepted by the courts all over the world in order to understand all the written laws, construing wills and other written frameworks. He also mentioned that the ordinary derivative and the grammatical construction of the law should be abided by in the first instance unless there is any absurdity or repugnancy due to which it is necessary to modify the ordinary understanding of the words. In the case of ***Matteson v. Hart***[24] the golden rule was elaborately discussed by Jervis CJ where he relied on the Golden Rule of Construction in order to understand the words used by the Legislature in the Acts and also to prevent any absurdity and injustice which may stem from the intention of the statute.

- **HEYDON'S RULE OF MISCHIEF**

In the Heydon's Rule of Mischief, he elaborated that only in such circumstances where the intention of the legislature appears to be unjust, only in such cases the intervention of the office of judges in interpreting the law is reasonable. Slightly deviating from what Lord Wensleydale has opined, instead of viewing the legislative intent as a whole and construe it all-together, the reasons for the enactment of the laws in retrospect should be taken into consideration so that we can derive the object it plans to subserve and the evil it plans to end. In the case of ***Newspaper Ltd. v. State Industrial Tribunal,***[25] the Latin maxim "*ex visceribus actus"* was cited which meant that while determining the intention of the legislation, detached sections of parts of the

[24] 139 E.R. 147 (1854)
[25] AIR 1957 SUPREME COURT 532

Act should not be taken, instead the intention of the act as a whole which construes the constituent parts should be considered.

- **LITERAL GOLDEN MISCHIEF**

As described by Lord Granworth LC, this is a "Cardinal Rule " which is a rule based on common sense which is as strong as can be". In the English cases, there are three basic rules as elucidated by ***GW Paton***. Those are:

1. Whatever the result, if the meaning of the wordings of law is plain then they should be applied as per the Literal Rule.
2. Unless there is any ambiguity or absurdity in the wordings of the law, the ordinary sense of the law should be resorted to as per the Golden Rule.
3. The general policy or intention of the statute must be considered and eliminate the evil which was directed as per the Mischief Rule.

- **LATTER PART OF THE RULE**

There is a lot of care which must be taken with regards to the later part of the Golden Rule and in the case of ***Christopher v. Lotinga,***[26] every word of the Golden Rule was subscribed to by Justice Willes. In the case of *Woodward v. Watts*, Justice Crompton expressed his doubts regarding this rule and opined that the Legislature must have enacted the legislation with a particular intent which may be destroyed if the courts reinterpret it due to some absurdity which defeats the whole purpose of the enactment. To understand the applicability of the three methods of judicial approach which is the literal rule, the golden rule and the mischief that the statute is designed for in order to prevent it, the case of ***Vacher v. London Society of Compositors***[27] can be referred to. In this case, the validity of Section 4(1) of the Trade Disputes Act, 1906 was in question as to whether any torturous acts which are committed by the trade unions are included under the protection or is it only such are which was torturous in nature in furtherance of any trade dispute. Deciding on the former view, the House of Lords relied on the aforementioned

[26] 143 E.R. 1003 (1864)
[27] 1912 UKHL 3

three judicial approaches in which Lord Macnaughten adopted the golden rule of interpretation which is derived from the case of ***Grey v. Pearson***, while Lord Atkinson espoused the literal approach which is derived from the case of ***Cooke v. Charles A Vageler***[28] and lastly, the history of the enactment of the stature and the application the mischief method has been relied upon by Lord Moulton.

The Supreme Court and High Court In India have applied the Golden Construction of Statutes in various judgements as previously discussed. But there is a certain confusion which is observed between the Golden rule and the Literal Rule as even though initially the literal meaning of the statute is taken into consideration if it is plain and logical but if there is any trace of absurdity or uncertainty then the interpretation of the court would pay a significant role. But if there is a possibility that there is more than one meaning of the wording in the statute, then any addition, substitution or rejection should be done by the court modifying the language so that the intention of the legislature is expounded. Some of the landmark Indian cases in which the Golden Rule was used was with respect to the interpretation of the provisions like "Section 23 of the Representation of People's Act, 1951" and Section 3A of the U.P. Sales Tax Act, 1948 which were dealt with in ***Narendra Kiadivalapa v. Manikrao Patil*** [29]and ***Annapurna Biscuit Manufacturing Co. v. Commissioner of Sales Tax, U P***[30] respectively. Therefore, the applicability of the Golden Rule of Interpretation in the Indian cases and the foreign cases has a narrow and wide approach which needs to be observed by the courts in their working.

The golden rule of interpretation is one of the better ways to strike a balance between statutory intent and evolving societal needs. It was best described in the case of ***Fitzpatrick v. Sterling Housing Association Limited, (1999)***[31]**,** that there are areas of law where a clear demarcation lies between the judiciary and the legislature. When it comes to interpretation, the intention of the legislature should always be kept in mind. If a particular provision clearly mentions the parties concerned with it, the judiciary for the sake of socio-legal development expands its

[28] [1900] UKHL J1214-1
[29] [1977] INSC 152
[30] 1982 SCR (1) 149
[31] 1999 UKHL 42

meaning unless the intention of the legislature says so. The judiciary cannot cross that line and perform the functions of the legislature.

Due to the possibility of errors in interpretation, the golden rule is not a perfect tool. It cannot always be used to eliminate absurdities in the plain meaning of the statute. Due to this, several jurists have come up with their own procedure of application of the rule to make it more efficient. The rule has been used and modified by judges in various cases for decades and it is still in use to this date as it has stood the test of time.

Mischief Rule of Interpretation:

The Mischief Rule, also known as Heydon's Rule, is a principle of statutory interpretation originating from Heydon's Case (1584). It is used to determine the intent of the legislature when the language of a statute is ambiguous. The rule focuses on identifying and rectifying the "mischief" or defect that the statute was enacted to address. By interpreting the law in light of the problem it seeks to remedy, courts aim to suppress the mischief and advance the remedy. The Mischief Rule is considered a form of purposive construction, as it prioritizes the purpose behind the law over its literal meaning. This approach ensures that the legislation fulfils its intended purpose and prevents absurd or unjust outcomes. It is widely applied in cases where a strict literal interpretation would fail to address the underlying issue, enabling the law to remain relevant and effective in achieving its goals.

The **Mischief Rule** is used to ascertain the "mischief" or the defect in the existing law that the statute was designed to address. The judge looks into the social problem or "mischief" that the law intended to remedy, and interprets the statute in a way that remedies this mischief.

To clarify, the process for applying the mischief rule is as follows:

- **Identify the Statute**: To begin with, you need to identify which statute or law is needing interpretation.
- **Examine the Mischief**: "The problem of mischief" should be examined under the mischief rule, which entails examining the legal dilemma that the statute sought to address. To accomplish this, the lawmakers' intention for the law must be evaluated.

Prior to the statute's adoption, what was the legal predicament or problem that needed resolution?

- **Identify the Remedy**: Identifying the remedy is crucial. It involves uncovering the intended solution provided by the legislature for the issue at hand.
- **Interpretation:** In a bid to forward the remedy proposed by the legislature, the rule instructs the interpreter to decipher the statute, implying that the judge must scrutinize the statute while keeping the issue it aims to solve in mind.
- **Avoid Going Beyond the Mischief**: Judges who turn to the mischief rule should exercise caution in their interpretation so as to refrain from exceeding the bounds of necessity when addressing the problem at hand. Rather than encompassing wider or unforeseen implications, it strictly targets the narrow concern which the legislature was addressing.

Arriving at a more purposive and equitable interpretation is the aim of the mischief rule. This is achieved by focusing on the reason behind the statute's enactment, especially when the language is ambiguous or clarification is needed. To do so, judges rely on the historical context and the problem the legislature aimed to solve. This approach can prove particularly useful in ensuring that the intention of the legislature is upheld.

Judicial interpreters use a variety of methods, including the mischief rule, to interpret statutes. However, the golden rule, literal rule, and purposive approach may be employed depending on the situation and the law's legislative intention.

- ***Smith v. Hughes (1960)*[32]:** An illustration of the mischief rule can be observed in the case of Smith v. Hughes (1960), which is a well-known instance in the realm of English law. The inquiry at hand was whether a street prostitute, the defendant, could be convicted of soliciting with the intention of prostitution. As per the Street Offences Act, 1959, it was against the law for a regular prostitute to linger or entice in a public place or street for the objective of prostitution.

In this case:

[32] [1960] 1 WLR 830

Identify the Statute: The Street Offences Act of 1959 was the statute that should be identified.

Examine the Mischief: The solicitation of prostitutes on the streets was the "mischief" that the statute aimed to address. It was deemed a public nuisance and moral concern. The legislature's goal was to regulate and control such activities.

Identify the Remedy: In public places, prostitutes are not allowed to solicit as per the legislature's intended remedy.

Interpretation: Applying the mischief rule, the court made its interpretation by taking into consideration both the issue and the intended solution. The crux of the matter revolved around whether the defendant's actions, although happening indoors, were targeted towards the passersby outside, thereby creating confusion as to whether it came within the scope of the statute.

Ultimately, the court's ruling held the defendant as culpable under the Act, as the judge concluded that the statute's primary aim was to address the more extensive problem of solicitation in public areas. The defendant's activities, though conducted domestically, nevertheless pursued the same malevolent goals that the statute attempted to prevent.

Avoid Going Beyond the Mischief: The court aligned its interpretation with the intended solution, rather than overextending beyond the issue at hand. This prevented unnecessary complications.

By examining the underlying issue that a law intended to fix and interpreting it in a manner that aligns with the intent of those who drafted it, the mischief rule can be employed to decipher a statute. Despite its wording not necessarily being applicable to particular scenarios, the legislation's primary objective must be met, as demonstrated in the Smith v. Hughes ruling.

Explanation: The Mischief Rule looks at the law's intent and its purpose, interpreting it in a way that addresses the problem it was designed to solve. It ensures that the law is applied in a manner that best serves its social purpose.

Kanwar Singh v. Delhi Administration[33]

- **Facts**: Under the *Delhi Corporation Act, 1902*, the Municipal Corporation was authorised to round up "abandoned cattle" grazing on government land. The petitioner contended that his cattle, though unattended, were not abandoned.
- **Judgement**: The court applied the mischief rule, interpreting "abandoned" to include temporarily unattended cattle. The action of rounding up the cattle was deemed valid.

Regional Provident Fund Commissioner v. Sri Krishna Manufacturing Company[34]

- **Facts**: The respondent's factory consisted of four units, collectively employing over 50 workers. To evade compliance with the *Employees' Provident Fund Act, 1952*, the respondent argued that each unit was a separate entity with fewer than 50 workers.
- **Judgement**: The court applied the mischief rule, treating the four units as a single industry. The provisions of the Act were upheld to protect workers' rights.

The Mischief Rule is a powerful tool for statutory interpretation, ensuring that the purpose and intent of legislation are upheld. By addressing the mischief, a statute seeks to remedy, the rule promotes equitable and purposive outcomes, preventing absurdities and closing legal loopholes. Despite criticisms of judicial overreach and subjectivity, the rule remains relevant in addressing ambiguities in statutory language. Through landmark cases such as ***Smith v. Hughes*** and ***Pyare Lal v. Ram Chandra***, the mischief rule has demonstrated its effectiveness in aligning statutory interpretation with legislative intent. While modern approaches like the purposive method have gained prominence, the mischief rule's principles continue to influence judicial decision-making, ensuring that laws evolve to meet the needs of society.

Interpretation is a vital judicial process that ensures laws are applied correctly and fairly in diverse situations. The **Golden Rule** and **Mischief Rule** are two important principles used by judges when the literal interpretation of a law leads to an unreasonable or absurd result or when the law's purpose needs to be fulfilled. While the Golden Rule modifies the literal meaning to prevent absurdity, the Mischief Rule seeks to understand and address the mischief the law was

[33] AIR 1965 SC 871
[34] AIR 1962 SC 1526

enacted to remedy. Both rules ensure that laws are applied in a manner that reflects the true legislative intent and societal needs.

6. Explain the literal rule of Interpretation with Important Case Laws. What do you mean by Harmonious Construction?

Interpretation of statutes is of two types –they can de distinguished as "literal" and "functional". The Courts have laid down that the Interpretation of the statutes must be in accordance with the literal meaning of the words and expressions read in the light of the "Statement of Objects and Reasons and the Preamble" of the Act". The Primary Rule of Interpretation of Statutes is called "Literal Interpretation" or "Literal Construction". It is also known as "Plain Rule of interpretation". In this form of interpretation, the "words" used in the Statute are construed according to their "literal" meaning or according to the popular and dictionary meaning of the term, in other words its plain sense. ***Chief Justice Jervis*** in ***Abley v Gale***[35] has explained the expression 'literal meaning'. He points out that "if the precise words used are plain and unambiguous, in our judgment we are bound to construe them in their ordinary sense even though it too leads in our view of the case to an absurdity or manifest Injustice. The words of a statute are to be first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the Statute to suggest the contrary. The tendency is that by doing so, the courts give effect to the intention of the Parliament and the presumption is that the words themselves do, in such a case it Is best to declare the intention of the law giver. It is a rule of construction of statutes that in the first instance the grammatical sense of the word is to be adhered to. The words of a statute must prima facie be given their ordinary meaning.

Where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail unless there be some strong and obvious reason to the contrary. In other words, the best possible interpretation of a statute would be to give its plain meaning. When the language of the statute is clear and unambiguous it is not necessary to look into the legislative

[35] 20 L.J.C.P (N.S) 233 (1851)

intent or object of the Act.[36] It is when the language is vague that the legislative's intention is to be taken into consideration. There is no room for construction if there isn't any ambiguity. If the language of a statute is clear and unambiguous the court must give effect to it and it has no right to extend its operation in order to carry out the real or supposed intention of the legislature.

When the language is not only plain but admits of but one meaning the task of interpretation can hardly be said to arise. The duty of the court of law is simply to take the statute as it stands, and to construe its words according to their natural significance. If the words of the statute are in themselves precise and lucid, then no more can be necessary than to expound those words in their natural and ordinary sense.[37] A restrictive and exhaustive definition should be expanded or made extensive to embrace things which are strictly not within the meaning of the word as defined. It doesn't look beyond the written words. If the words given in the statute are lucid and explicit, it is not for the judges to go beyond that language or words to try and establish what the legislative might have meant by using that word. It is also known as "Grammatical Interpretation". The Courts have to follow this principle even if it results in irrationality or even if it is contrary to the policy or intention of legislature. It doesn't look beyond the *litera legis* which means letter of legislation. It just looks at what law says. Words and phrases are to be construed by the courts in their ordinary sense, and the ordinary rules of grammar and punctuation have to be applied. If, applying this rule, a clear meaning appears, then this must be applied, and the courts will not inquire whether what the statute says represents the intention of the legislature. In order to determine the literal meaning of a statute the courts have to ascertain the ordinary meaning of a word in a statute by referring to a dictionary or scientific or any other technical works where the words have been used. This rule is also widely followed in India.

It is an elementary principle of the construction of statutes that the words have to be read in their literal sense. Thus, generally speaking, words and expressions would be given their plain and ordinary meaning which cannot be cut down or curtailed unless they in themselves are clearly restrictive. If the words of the statute are clear and unambiguous, it is the plainest duty of the court to give effect to the natural meaning of the words used in provision. When the meaning of the words is plain, it is not the duty of Courts to busy themselves with supposed intentions. It,

[36] Arul Nadar v. Authorised Officer, Land Reforms (1998) 7 SCC 157.
[37] Corporation of City of Nagpur v. Employees AIR 1960 SC 675.

therefore, appears inadmissible to consider the advantages or disadvantages of applying the plain meaning whether in the interests of the prosecution or accused.

In constructing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what that provision says. If the provision is unambiguous, and if from that provision, the legislative intent is clear, there is no need to call into aid other rules of construction of statutes. *Absoluta sentantia expositore non-indigent*- plain words need no exposition. Such language best declares, without more, the intention of the law-giver, and is decisive of it. The Literal rule follows the legal maxim, *verbis legis non est recelendum*, which means from the words of law there should be no departure. The meaning of a word is also affected by its context, which is reflected in the legal maxim noscitur a sociis which means that the meaning of an unclear word or phrase should be determined by the words immediately surrounding it. Courts interpret a particular word in the context in which it had been used. In ***Keshavnanda Bharti v. State of Kerala,***[38] J.Ray pointed out that a word gets its 'colour' in the context in which it is used. The word gathers its meaning not only in the context that it has been used but from the words used in similar conditions. Salmond points out that a word will get its meaning from its context and that is the reason why the technical word 'void' may be interpreted as 'voidable'. In ***Bengal Immunity Co. Ltd. V. State of Bihar,***[39]The Supreme Court observed- "It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress." A statute shall not be interpreted so as to be inconsistent with other statutes. In ***All saints High School Hyderabad & others Vs. Government of Andhra Pradesh,***[40] it was observed-"Where an Act is expressed in a language of a generality which makes it capable, if read literally, of applying to matters beyond the relevant legislative power, the Court will construe it in a more limited sense so as to keep it within power." The literal rule of interpretation restricts the courts to stick to the natural meaning of the given words. They have to confine themselves to the exact meanings of the words used in the statutes. The Judge cannot modify the language of the Act with the intention of making it in accordance of his views on

[38] (1973) 4 SCC 225
[39] A.I.R.1955 S.C.661
[40] 1980 SCR (2) 924

what is right and reasonable. The court should attach ordinary meaning to the Statute even if it amounts to absurdity or irrationality. If the interpretation leads to absurdity it is not the duty of the judiciary to rectify it but it is the onus or in other words burden or load of the legislature to correct it. Under pure literal rule the court should always avoid reading with the context, but the contextual interpretation can be a slight modification. In case the meaning of a word has changed due to passage to time, the word should be taken to mean as to what it meant the statute was enacted. As the language changes from age to age so there can be no hard and fast rule for legislative diction. If in a certain provision there is a use of technical words, then in such situations the technical meaning of those words should be used. The traditional role of Literal Rule of interpretation forbids the court to attach any other meaning other than the Ordinary one.

Ordinary and natural meaning of words should not be controlled by spirit of legislation. The spirit of law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the rules made thereunder. The plain meaning must be subject to context. The literal import to a particular language may be subject to modification and variation by the context, that is, the language surrounding and accompanying the terms in question. A statute is not to be construed merely with reference to grammar, but should be construed reasonably in particular to give effect to the intent and purpose of the legislation, if the language permits. The construction which leads to unconstitutionality or invalidity must be avoided.

There are certain Advantages and Disadvantages mentioned as follows:

Advantages:

Literal rule was defined by ***Lord Tindal*** as, "the words themselves alone do…best declare the Intention of the lawgiver". The rationale behind this was to maintain the faith of the general Public on the Legislative bodies and not giving the power to make laws in the hands of the Judges the way of Interpreting Statutes. The Literal Rule follows the words of the Legislature. According to Lord Diplock, "it is not for the Judge to invent fancied ambiguities"[41]. As the Act Is framed by the Legislature, the Literal Rule basically forces the Judges to follow the same. The Literal rule of interpretation is most preferable when there are issues related to politics as the

[41] Duport Steels Ltd. V Sire, (1980) 1 All E.R. 527, 541.

Judge cannot make any decision according to his discretion and needs to be stick to the provisions framed. This also helps restricting the Judiciary from creating laws contrary to the provisions of the Statute. This also makes the Act and its provisions easy to understand for the general public. Because of interpreting only, the ordinary meaning of the words, the process of Interpretation becomes more certain and brings consistency in interpreting the Statute.

Disadvantages:

1. The Parliament is the superior body and considered as supreme.
2. Limitation of powers.
3. Creates loopholes in the laws.
4. There might also be a scenario the place a dispute may additionally occur amongst the judges concerning the natural, ordinary and famous that meaning of the statute.

Important case laws:

- ***FISHER V. BELL 1961***[42]

In this case, the defendant displayed a flick knife in his show window with a price tag on it. The statute made it an offense to "offer for sale" certain weapons. The court applied the literal rule and held that the display of the knife with a price tag was not an offer for sale but an invitation to treat. This case demonstrates the technical and narrow interpretation of the literal rule.

- ***PV. NARASHIMARAO'S CASE***[43]

The PV Narasimha Rao case refers to a landmark judgement by Supreme Court of India regarding the application of the literal rule of statutory interpretation. PV Narasimha Rao was a former Prime Minister of India who was accused in a Corruption case. The case involved interpreting a provision of the Representation of the People Act, 1951, which dealt with disqualification of Members of Parliament.

In this case, the Supreme Court upheld the literal interpretation of the provision in question, starting that the words of the statute were clear and unambiguous. As a result, Narasimha Rao was disqualified from holding public office.

[42] 1961] QB 394
[43] P.V. Narsimha Rao v. State AIR 1998 SC 2120

This case is significant because it reaffirmed the importance of adhering to the literal rule in statutory interpretation, especially in cases where the language of the statute is clear and unambiguous. It also highlighted the principle that judges should interpret statutes based on their plain meaning, regardless of the consequences or identity of the individuals involves.

- ***Maqbool Hussain v. State of Bombay,***[44]

In this case, the appellant, a citizen of India after arriving at the airport did not declare that he was carrying gold with him. During his search was carried on, gold was found in his possession as it was against the notification of the government and was confiscated under **section 167(8) o**f ***Sea Customs Act.***

Later on, he was also charged under ***section 8 of the Foreign Exchange Regulations Act, 1947.*** The appellant challenged this trial to be violative under ***Article 20(2)*** of the Indian Constitution. According to this article, no person shall be punished or prosecuted more than once for the same offence. This is considered as double jeopardy.

It was held by the court that the Seas Act neither a court nor any judicial tribunal. Thus, accordingly, he was not prosecuted earlier. Hence, his trial was held to be valid.

The issue in the case was regarding the interpretation of section 3(1)(c) of U.P Control of Rent and Eviction Act, 1947. In this case, a tenant was liable for evidence if he has made addition and alternate in the building without proper authority and unauthorized perception as materially altered the accommodation or is likely to diminish its value. The appellant stated that only the constitution can be covered, which diminishes the value of the property and the word 'or' should be read as land.

It was held that as per the rule of literal interpretation, the word 'or' should be given the meaning that a prudent man understands the grounds of the event are alternative and not combined.

- ***State of Kerala v. Mathai Verghese and others,***[45]

[44] AIR 1953 SUPREME COURT 325

in this case a person was caught along with the counterfeit currency "dollars" and he was charged under section 120B, 498A, 498C and 420 read with **section 511 and 34 of Indian Penal Code** for possessing counterfeit currency. The accused contended before the court that a charge under section 498A and 498B of Indian Penal Code can only be levied in the case of counterfeiting of Indian currency notes and not in the case of counterfeiting of foreign currency notes. The court held that the word currency notes or bank note cannot be prefixed. The person was held liable to be charge-sheeted.

Doctrine of Harmonious Construction

The term harmonious construction refers to such **construction by which harmony** or oneness amongst various **provisions of an enactment is arrived at**. When the words of statutory provision bear **more than one meaning** and there is a doubt as to which meaning should prevail, their interpretation should be in a way that **each has a separate effect and is neither redundant nor nullified.** The Doctrine of Harmonious Construction, a fundamental principle in legal interpretation, plays a pivotal role in resolving conflicts and ambiguities within laws and statutes. Interpretation and application of Harmonious Construction involve reconciling conflicting legal provisions to uphold the overall intent of the law. In general, the doctrine of harmonious construction means that when there arises a conflict between different statutes or between the statutes, in such circumstances, court try to interpret them in a way that makes them work together smoothly instead of declaring other statutes void. The main aim of this doctrine is to give effect to all the provisions while maintaining the overall coherence and purpose of the law.

The objective of harmonious construction:

- The objective of harmonious construction is to avoid any confrontation between two enacting provisions of a statute and to construe the provisions in such a way so that the harmonize. The basis of this rule is that the Legislature never envisages to provide two conflicting provisions in a statute, for the reason that it amounts to self-contradiction.
- The real legislative intent, that we try to discover in the process of interpretation cannot be to provide for something in one provision and deny the same in subsequent one.

[45] 1987 AIR 33 SCR(1) 317,

Hence, even if an inconsistency is found, the same should be considered to be unintentional and as such, is required to be cured by way of harmonious construction.

Case 1: Unni Krishnan, J.P. and ors., etc. v. State of Andhra Pradesh and ors.[46]

The writ petition was filed challenging whether the 'right to life' under Article 21 of the constitution guarantees a fundamental right to education to the citizens of India and right to education includes professional education. This was challenged by certain private professional educational institutions and also in respect of regulating capitation fees charged by such institutions. The Supreme Court held that right to basic education was implied by the fundamental right to life when read with article 41 of directive principle on education. As per article 45 of the constitution, the state is to provide free and compulsory education for all children below the age of 14 years and there is no fundamental right to education for a professional degree that flows from article 21. Several states have passed legislation making primary education compulsory and there is no central legislation to make elementary education compulsory. In addition, the Court held that, in order to treat a right as fundamental right, it is not necessary that it should be expressly stated as one in Part III of the Constitution: "the provisions of Part III and Part IV are supplementary and complementary to each other". The Court rejected that the rights reflected in the provisions of Part III are superior to the moral claims and aspirations reflected in the provisions of Part IV.

Showing the contexts in which harmonious construction appears in any document, we have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are handmaid of justice stress. In the present context, the strict interpretation would defeat justice.

[46] AIR 1993 SUPREME COURT 2178

- The **Supreme Court** in the case of **Commissioner of Income Tax v. Hindustan Bulk Carrier (2003)**, has laid down the following principles that govern the doctrine of harmonious construction:
    - While interpreting the provisions, the courts need to avoid all circumstances of **head-on clash between the provisions**. They must be construed harmoniously.
    - Interpretation by the Courts should be done in such a way that **one provision does not defeat the other provision** unless there seems no possible construction.
    - If the situation is so that it becomes impossible to reconcile the provisions in conflict, the courts must decide in such a way that **both provisions are given effect.**
    - Any construction that renders one provision of the statute (or another statute, in the case of two different statutes) useless or dead letter **should not be given effect.** Such construction is not a harmonious construction.
    - A harmonious construction is one which **does not defeat any other provisions.**

7. What are the different classifications of Law?

The classification of law is the process of organizing various legal principles and rules into distinct categories based on their nature, purpose, and scope. This systematization helps legal professionals and scholars to more easily understand, study, and navigate the complex field of law.

The purpose of classifying law is to bring order and clarity to the intricate web of legal principles and regulations. By systematically categorizing different types of laws based on their characteristics, nature and scope, the classification process enhances the understanding, interpretation and application of the legal framework. This organisation aids legal professionals, scholars and students in comprehending the diverse aspects of law more effectively.

While classifying laws, we must not forget that no classification of laws is going to be permanent. Law keeps on changing according to the needs of the people at different times and in different places. Hence the nature and shape of law must continue to change.

Here it is important to note that Roman jurists attempted a classification of laws. Similarly, the Hindu law- givers gave 18 titles or heads of Vyavahara or civil laws.

Following are some of the classifications of laws:

1. Primary Classification of Law

Public Law Vs. Private Law

Public law governs the relationships between individuals and the state and ensures that government actions are in accordance with the law. It is primarily concerned with matters that affect society as a whole and defines how different branches of the government operate, ensuring their accountability. Key areas of public law include constitutional law, which establishes the structure of the government and outlines the rights of individuals. It serves as the highest form of law, guiding the functions of the executive, legislative, and judicial branches. Another essential area is administrative law, which regulates the activities of government agencies and ensures they act within legal limits, providing a framework for accountability and redress when administrative decisions impact individuals. Criminal law is also a crucial component of public law, as it defines offenses against the state, prescribes punishments for wrongdoers, and seeks to protect public safety by penalizing those who commit crimes. In contrast, **private law** governs interactions between individuals or organizations, focusing on personal or business relationships rather than societal concerns. Contract law, a significant area within private law, ensures that agreements between parties are legally binding and that promises made in such contracts are upheld. Tort law deals with civil wrongs, such as negligence, and provides remedies to those who have been harmed by the actions of others. Property law governs the ownership, use, and transfer of property, encompassing real estate, personal belongings, and intellectual property rights. Family law addresses relationships within families, including marriage, divorce, child custody, and inheritance, providing legal frameworks to resolve familial disputes and safeguard the rights of family members.

Substantive Law Vs. Procedural Law

Substantive law establishes the rights and duties of individuals and entities. It provides the framework for determining what is legally right or wrong, setting out legal principles that define

offenses, rights, and the remedies or punishments that follow. Substantive law includes rules that govern contractual relationships, property rights, personal rights, and obligations. For instance, in criminal law, substantive rules define the crimes and the penalties for those crimes, whereas in civil law, substantive law dictates the rights of parties in areas such as contracts and torts. On the other hand, **procedural law** outlines the processes and procedures necessary for enforcing substantive law. It governs how legal cases are initiated, the steps involved in a legal proceeding, and the rules that ensure fairness and consistency in the administration of justice. Procedural law ensures that courts follow the correct steps in civil and criminal cases, from filing lawsuits and presenting evidence to issuing judgments and enforcing decisions. Without procedural law, there would be no standardized way to enforce substantive law, making it difficult to administer justice effectively.

Civil Law vs. Criminal Law

Civil law deals with private disputes between individuals or organizations, with the primary goal of resolving conflicts and providing compensation to the aggrieved party. Civil cases often involve issues like breach of contract, property disputes, or torts, where one party seeks monetary damages or specific remedies rather than punishment of the other party. The focus in civil law is on making the injured party whole, rather than penalizing the wrongdoer. For instance, in a negligence case, the injured party may receive compensation for their losses without the wrongdoer facing criminal penalties. **Criminal law**, by contrast, addresses actions that are offenses against society as a whole, even if the immediate victim is an individual. Criminal law seeks to punish wrongdoers and deter future crimes, aiming to protect public safety and order. When a person violates criminal law, the state or government typically prosecutes the offender, and the consequences can include fines, imprisonment, or other penalties designed to penalize and rehabilitate the offender. Criminal cases, therefore, carry more severe consequences for the accused, as they are seen as threats to the well-being of society.

2. Secondary Classification Of Law

National Law vs. International Law

National law refers to the legal rules and regulations that operate within the borders of a specific country. It governs the conduct of individuals, businesses, and government entities, and is created by national legislative bodies, interpreted by courts, and enforced by domestic legal

institutions. Each country has its own national laws that reflect its unique political, social, and economic context. For example, the Indian Penal Code outlines criminal offenses and penalties within India, while tax laws govern financial obligations within specific jurisdictions. **International law**, on the other hand, governs the relationships between different countries and international organizations. It is concerned with matters that cross national boundaries, such as trade, human rights, environmental protection, and conflict resolution. International law can be divided into public international law, which deals with the rights and responsibilities of states and organizations, and private international law, which resolves conflicts of laws between different jurisdictions. Treaties like the Geneva Conventions or organizations like the World Trade Organization (WTO) illustrate how international law operates to maintain global cooperation and order.

Common Law vs. Civil Law

Common law is a legal system that relies heavily on judicial decisions and precedents. In common law countries, judges interpret previous rulings, known as precedents, and apply them to current cases, ensuring consistency and predictability in legal rulings. This system is prominent in countries like the United States, United Kingdom, and Australia, where judicial interpretations can evolve the law over time based on new rulings. Common law systems are flexible, allowing the law to develop as societal norms change. **Civil law,** on the other hand, is based on codified statutes and laws enacted by legislative bodies. Civil law judges focus on applying specific legal codes to the facts of each case rather than interpreting previous decisions. This legal system emphasizes clear and comprehensive written laws that cover various possible scenarios, providing less room for judicial interpretation. Civil law systems are common in countries like France, Germany, and Japan, where legal codes provide detailed guidance on how the law should be applied in every situation. In summary, these various classifications of law—public versus private, substantive versus procedural, civil versus criminal, national versus international, and common versus civil—demonstrate the complexity and diversity of legal systems. Each classification serves a distinct function in ensuring order, fairness, and justice within and between societies.

8. Distinguished between –

i. Substantive Law and Procedural Law

Substantive law	Procedural Law
Substantive laws deal with legal Rights and obligations of the individuals among themselves and towards the state.	Procedural law is the set of rules that govern how legal cases are handled in court. It includes rules for how to enforce rights, how to conduct trials, and how to make decisions
These laws control and govern the rules of law as a whole	These laws exclusively deal with the proceedings in the court and the methods to start a legal case
Rights of parties and punishment for wrongdoer	initiation and prosecution of civil and criminal lawsuits
Related to Matters outside the court	Related to Matters inside the court
Concerned with Fixation of rights and duties of the citizens	Concerned with Ways and means for imposing substantive law.
These laws have Individual capacities to decide the course of any legal proceedings	These laws only can dictate the paths any legal proceedings should follow
These laws are applied only in legal court.	These laws are applied in both legal and non-legal courts including proceeding of litigation
These laws are regulated by the acts of parliament or governmental implementations.	These laws are regulated by statutory laws only

ii. Statutory Law and Non- statutory Law

Statutory law	Non statutory law
Statutory law refers to laws enacted by legislative bodies, such as Congress or Parliament, through the formal legislative process. It includes laws written and codified in statutes, codes, regulations, and ordinances.	Non statutory law refers to a legal system based on judicial decisions, court precedents, and customs, developed over time by judges and legal practitioners. It relies on legal principles and interpretations derived from previous cases.
Statutory law derives its authority from legislation passed by the legislative body and is written in statutes, codes, regulations, or	Non statutory law derives its authority from judicial decisions and court precedents, which establish legal principles and interpretations

ordinances.	that guide future cases.
created through the legislative process, where lawmakers draft, debate, and pass legislation to address specific issues or regulate certain areas of society.	evolves through the gradual development and interpretation of legal principles by judges and courts in response to specific cases and circumstances.
Statutory law can establish precedent, but its interpretation and application can be influenced or modified by subsequent legislation or court decisions.	places significant emphasis on the concept of precedent, which means that previous court decisions and legal interpretations serve as binding authority for future cases with similar circumstances.
less flexible as it is based on specific legislation, although it can be amended or repealed through the legislative process.	allows for flexibility and adaptability as judges can interpret and apply legal principles to new situations and changing societal norms.
judges primarily apply and interpret laws enacted by the legislative body, rather than creating new legal principles through their decisions.	judges play a vital role in interpreting and applying the law. They have the authority to create legal principles and precedents through their decisions.
applicable in cases where specific laws or legislation exist, providing clear rules and regulations for a particular matter.	applicable in cases where there is no specific statute or legislation governing a particular issue, allowing judges to rely on legal principles, precedents, and customary practices.
can supersede or modify customs and practices, providing a more structured and uniform legal framework regardless of customary practices.	considers customs and long-standing practices as important factors in shaping legal principles and interpretations, especially in areas not specifically addressed by statutes.
Examples of statutory law systems include civil law countries like France, Germany, and Japan, where laws are primarily codified in comprehensive civil codes or specific statutes.	Examples of common law systems include the United Kingdom, the United States, Canada, and other countries that adopted the English legal tradition.

iii. Public law and Private law

Public law	Private law
Public Law deals with the relationship between individuals and the state, including matters such as constitutional law, administrative law,	Private Law governs the relationships between individuals, such as contracts, property, torts, and family law.

criminal law, and regulatory law.	
Addresses societal concerns like national security and human rights.	Focuses on individual disputes and personal interactions.
Protects the interest of general public.	Protects the interest of private group, individuals.
Penal sanctions in public law are more severe and strict and may attract criminal prosecution for acts against public policy.	Sanctions under private law are not as severe, they are mainly payment of damage or expression of apology.
Public laws are laws intended for general application, such as those that apply to the nation as a whole or a class of individuals.	Private laws are enacted for the benefit of a particular individual or small group, such as claims against the government or individual immigration or naturalization matters.

iv. International law and Municipal law

International law	Municipal law
Governs relationships between sovereign states, focusing on foreign affairs and interactions involving multiple countries.	Regulates matters within the borders of a specific state, including issues between individuals and the state.
Derives authority from the collective agreement and consent of sovereign states, based on international norms and principles.	Derives authority from the state itself, enforced within a specific territory and emanating from the sovereign authority of that state.
Based on consent and consensus among nations, with weaker enforcement.	Based on the command of the sovereign state, with stronger enforcement mechanisms.
Often considered weaker due to weaker sanctions.	Stronger enforcement mechanisms.
Treaties, conventions, international customs and general principles of law recognised by civilised nations.	Legislation, precedent and customs.
International Court of Justice serves as the authority, binding on parties that have subjected themselves to its jurisdiction.	Courts are all-encompassing and binding.
Primarily concerns states as the main subjects.	focuses on individuals.
United Nations acts as an international legislative body.	Parliament acts as the legislative body.
Relies on voluntary compliance and diplomatic measures.	Uniformly enforceable throughout a state.

v. Precedent and Legislation

Precedent	Legislation
Case law is very minute, complex and not easy to understand. It can be understood only by lawyers, judges and jurisprudents.	Generally, the statute law is brief, clear, easily accessible and knowable. It can be understood by an ordinary educated person.
Ignorance of precedent is not concerned with the ordinary person. Precedent is concerned only by lawyers, judges and jurisprudents.	"*Ignorantia facti doth excusat; Ignorantia juris non excusat*" (Ignorance of fact is an excuse, but ignorance of law is no excuse.) this maxim is concerned with all the people.
In precedent, rules and principles are laid down by inductive method.	In legislation, the deductive method is resorted to. The courts take the rules from the statute and apply it to particular cases.
Legislation has abrogative power also. It not only created law but it can abrogate an existing law, existing in whatever form- statute, precedent or custom	Precedent is only constitutive. A judge is bound by the precedent of the higher courts and the enacted law. If a precedent checks the operation of a rule, it is only on the ground that it is not law. But, when a rule is established as law, a precedent cannot abrogate it. Thus, precedents can work successfully only for any legal growth and not for any legal reform which can be done only by legislation.
A statute can make rules for the future cases which may arise, in other words, a statute can be laid down law beforehand.	A Precedent can lay down a rule when a case comes before it. Thus, its emergence depends on litigation.
the operation of legislation is perspective though it may be retrospective also if it so chooses. In certain countries, in some branches of law, there can be no retrospective legislation.	A precedent makes law in the very act of enforcing and applying it. Thus, its operation is mostly of a retrospective nature. The rules laid down in the decision operate from the date of the transaction which is the subject-matter of the dispute.
The very aim of the legislation is to make law.	The main purpose of the precedent is to interpret and to apply the law.

vi. Civil Law and Criminal Law

Civil law	Criminal law
Civil Law is a general law which solves	Criminal Law deals with offences that are

disputes between two organisations or individuals. As per Civil Law the wrongdoer will have to compensate the affected organisation or individual. Civil Law deals with Property, Money, Housing, Divorce, custody of a child in the event of divorce etc.	committed against the society. It mets out varying degrees of punishment commensurate with the crime committed. Criminal Law will deal with serious crimes such as murder, rapes, arson, robbery, assault etc.
Civil Law is initiated by the aggrieved individual or organisation or also known as 'plaintiff.'	The Government files the petition in case of criminal law.
In case of Civil Law, to start a case, the aggrieved party needs to file a case in the Court or Tribunal	As per Criminal Law, to start a case, a petition cannot be filed directly in a court, rather the complaint should be first registered with the police, and the crime needs to be investigated by the Police. Thereafter a case can be filed in the court.
The objective of Civil Law is to protect the rights of an individual or organisation and make sure that he or the concerned organisation receives the compensation for the wrongs that they have suffered.	The purpose of Criminal Law is to punish the wrongdoers and protect society, maintain law and order.
In the case of Civil Law, there is no punishment like Criminal Law, but the aggrieved party receives the compensation and the dispute gets settled.	In the case of Criminal Law, punishment is meted out as per the seriousness of the criminal offence committed or a fine could be imposed.
In the case of Civil Law, the power of the court is to pass judgement or injunction to compensate for damages caused to the aggrieved party.	In the case of Criminal Law, the powers of the court are charging a fine, imprisonment to the guilty of a crime, or discharge of the defendant.
In Civil Law cases, the defendant is considered to be either liable or not liable.	In Criminal Law parlance, the defendant is considered either guilty or not guilty by the court.

vii. Custom and Legislation

Custom	Legislation
Definition: a. Austin: - A custom is a system of rules of behavior that the governed follow without prompting and in accordance with a law	Definition: a. Salmond: - Legislation is a type of legal source in which a competent authority declares norms.

enacted by a political superior. b. Salmond: - Custom embodies those ideals that have risen to the top of the national consciousness as notions of justice and public benefit	b. Gray: - Legislation is the official statements of the society's legislative organs
Custom is de-facto.	Legislation is de-jure.
Custom regulates subject-to-subject relationships	Legislation establishes the relationship between the state and its subjects
The existence of a state is not required.	The existence of a state is required for legislation
Primitive society's most distinguishing feature is custom	Legislation is a characteristic of a modern concept.
Customary laws grow out of practise and long existence in the society	A theoretical principle gives rise to legislation
Customary laws are mostly unwritten and non-scripted; thus, it is very difficult to trace	Legislation is complete, precise, written in form and easily accessible

viii. Interpretation and Construction

Interpretation	Construction
Interpretation is the process of ascertaining the true meaning of the words and the Purpose of the legislation	Construction is the process of using the legal text to draw conclusions that go beyond its plain language to solve Inconsistencies
Interpretation may be performed when a certain term or phrase in law has an unambiguous meaning,	Construction may occur when the language and the meaning attached to specific phrases in the laws are unclear and ambiguous.
The process of interpretation identifies the methods that can be used to interpret any statute.	Construction intends to bring it to a conclusion.
Interpretation is used to determine the linguistic meaning of a legal text.	The legal impact of the legislative text can be ascertained through construction.
Ambiguity is removed by interpretation.	Construction works to create standards to overcome ambiguity
A legal text can be partially interpreted.	It is necessary to complete construction as a whole.
Interpretation can be seen as a broad form of	Construction is almost like an interpretation in

construction	which the words are considered

ix. Supreme and Subordinate legislation

Supreme legislation	Subordinate legislation
Supreme legislation is that which proceeds from the sovereign power in the state. It cannot be repealed, annulled or controlled by any other legislative authority. It is enacted by the highest law-making authority in the state. For example, parliament in India, USA and England.	Subordinate legislation is legislation made by the authority or other than the supreme authority in the state in the exercise of the power delegated to it by Supreme authority. This is controlled by the supreme authority. Thus, legislative authority is dependent for its continued existence and validity on the supreme authority.
Supreme legislation is one and parliament has the supreme authority.	Subordinate legislation is of several kinds. All other forms of legislative activity recognized by the law are subordinate legislation.
It cannot be repealed, annulled or controlled by any other legislative authority, except parliament.	It can be repealed, annulled or controlled by parliament.

9. Define the term Research and Legal research. Discuss the importance objectives of Legal Research. What are the kinds of Legal Research. Explain the differences between Doctrinal and Non-Doctrinal Research.

Research is analyzing and finding other outcomes or results on a particular topic of subject. It enhances the quality of study of any material under process. It gives a vast idea and depth knowledge of a subject and turn out to be fully known & analysed.

"Research is an art of scientific investigation… gathering and analyzing a body of information or data and extracting new meaning from it or developing unique solutions to problems or cases"– by ***Cohen N & Arieli T. (2011).***

Various scholars have defined Research in their definitions. They are as follows:

- ***Creswell*** – Research is a process of steps used to collect and analyse information to increase our understanding of atopic or issue.
- ***Merrlam-Webster*** – Research is studious inquiry or examination, especially investigation or experimentation aimed at the discovery and interpretation of facts.
- ***Redman and Mory*** – Research is a movement from the known to the unknown.

Legal research is also similar to research in fact it is a type of Research. Legal research is the analysis of new ideas and observation in different sector of law subjects. It is used to search answer in laws to support an argument or decision.

Importance of Legal Research-

i. **Easy to understand** – legal research helps to understand the newly found laws which makes it simple to research about. It reduces the complexities and difficulties while analysing these. It ensures that laws are defined in a simplified way. It also helps to stay abreast the latest statutes, regulations and case laws.

ii. **To build strong arguments** – it allows to find similar case laws for formulating our own arguments. Also, by opposing the counter arguments one can formulate the necessary stronger arguments against it.

iii. **Informed decision-making power** – it provides a wide range of knowledge which helps in the long run to research and analyse any situation. It also makes sure that one is sharing a wise and fair opinions regarding the concerned circumstances if occurs also in court or any other situation.

iv. **Legal advice** – it allows one to provide wiser and best legal advice to client. It helps in good client concealing with up-to-date legal information. Also, it helps to negotiate favorable terms and conditions in favour of good legal advice.

v. **Academic excellence** – staying updated about legal terms and conditions allows a person to write various theses in accordance of the information collected or researched. Basically, it helps to provide in depth legal analysis.

Objectives of legal research:

i. Academic objectives –

- It helps to gain deep understanding of legal principles and concepts.
- It develops the skill of critical analysis of legal texts, case laws, statutes etc.
- It allows to apply effective research methodologies to inquire legal problems.

- It gives a sense of confidence to contribute this knowledge to larger legal sphere and for the advancement of further researches.

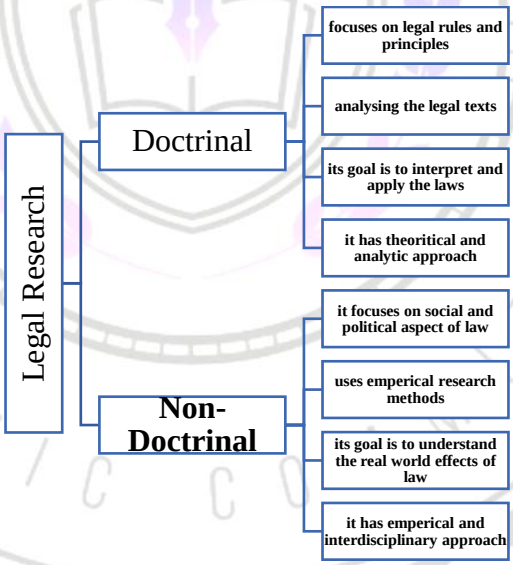
ii. Practical objectives –

- It helps to solve the legal problems with effective solutions.
- It helps to make informed decisions about any other statutes and regulations laid down in the constitution or any other research paper.
- It allows a person to build strong arguments and represent their clients effectively.

There are broadly two kinds of legal research. They are :

i. Doctrinal legal research.
ii. Non-doctrinal legal research.
iii. There are some other types of legal researches as well namely quantitative and qualitative legal research.

Difference of Doctrinal and Non-Doctrinal Legal Research:


Legal Research
Doctrinal
focuses on legal rules and principles
analysing the legal texts
its goal is to interpret and apply the laws
it has theoritical and analytic approach
Non-Doctrinal
it focuses on social and political aspect of law
uses emperical research methods
its goal is to understand the real world effects of law
it has emperical and interdisciplinary approach

The difference between doctrinal and non-doctrinal legal research lies in its methodologies, purposes, sources, and applications within the field of law. These two approaches offer distinct perspectives and are used by legal scholars, practitioners, and policymakers to understand, analyse, and apply the law more effectively.

Focus and Purpose

- **Doctrinal Research**: Doctrinal legal research is primarily concerned with analysing legal doctrines, rules, and principles. It seeks to interpret, clarify, and organise legal texts and principles within a given legal framework. The purpose is often to provide a clear understanding of what the law says, identify precedents, and apply them consistently across similar cases. This approach focuses on established legal sources and is sometimes called "black-letter law" because it centres on existing written law.
- **Non-Doctrinal Research**: Non-doctrinal research, on the other hand, is practical and empirical. Its purpose is to understand the social, economic, and cultural impact of the law. It explores how legal principles function in society, analysing their effectiveness, accessibility, and real-world implications. Non-doctrinal research examines how people are affected by laws and includes empirical studies, such as surveys, interviews, and case studies.

Data Source and Collection Method

- **Doctrinal Research**: This research type relies on **secondary sources** such as statutes, case law, textbooks, and academic articles. Researchers use a library-based or desk-based approach, relying on legal texts, judicial decisions, and scholarly commentary. The method does not require fieldwork or interaction with the public, as it's grounded in existing documentation.
- **Non-Doctrinal Research**: In contrast, non-doctrinal research uses **primary data** collected through fieldwork. Researchers gather data directly from people, cases, and social settings by conducting surveys, interviews, and observations. Non-doctrinal research involves going beyond the library to understand how laws impact individuals and communities.

Orientation: Theoretical vs. Empirical

- **Doctrinal Research**: The doctrinal method is theoretical, focusing on the interpretation and application of legal rules. It provides legal clarity by analysing and categorising laws but does not investigate the real-world effects of these laws on people.
- **Non-Doctrinal Research**: This approach is empirical and socially oriented. It studies the actual impact of laws on society, including economic, social, and political influences. It

often includes insights from social sciences, making it interdisciplinary and grounded in real-world experiences.

Scope and Application

- **Doctrinal Research**: Doctrinal research is narrower, focusing on a specific legal doctrine or principle. It is primarily used by courts, lawyers, and scholars to provide clarity and consistency in legal interpretations and judgements. It is also foundational for understanding legal systems and building arguments in legal cases.
- **Non-Doctrinal Research**: Non-doctrinal research has a broader scope, as it considers the law within the social, cultural, and economic contexts. It informs policymakers and legislators, providing feedback for drafting new laws or revising existing ones based on societal needs.

Training and Skills Required

- **Doctrinal Research**: This research method typically does not require specialised training beyond knowledge of legal texts and reasoning. It is suitable for legal professionals who interpret laws based on written resources.
- **Non-Doctrinal Research**: This approach often requires interdisciplinary skills, including knowledge of social science research methods, data analysis, and fieldwork. It requires special training to design and conduct empirical studies, analyse findings, and understand social behaviour.

In essence, the legal research is a branch of research which deals with the legal world and relevant case laws and fields of law as a whole. The doctrinal and non-doctrinal legal researches helps to understand the factual information regarding the same cases and analysing the expected possibilities of the legal papers and fields, respectively.

10. What is Data? What is the source of Information or Data? What are tools of Data collection? Discuss the Questionnaire Method of Data Collection.

In legal research, the concept of data refers to factual information, evidence, or raw material that forms the basis for legal analysis, decision-making, and argumentation. Data in legal research

encompass a wide range of information, including factual scenarios, case details, statutes, regulations, judicial opinions, legislative history, legal commentary, and empirical findings.

a. Types of Data:

i. ***Factual Data-*** Pertains to the specific details and circumstances of a case, transaction, or legal scenario. Factual data may include witness testimony, documentary evidence, timelines, events, and other relevant facts essential for understanding the context and background of a legal dispute.

ii. ***Empirical Data- :*** Involves quantitative or qualitative research findings, surveys, studies, and statistical analyses related to legal phenomena, trends, behaviours, or outcomes. Empirical data provide empirical evidence and insights into legal practices, judicial decision-making, legal trends, and the impact of legal policies or reforms.

b. Sources of Data:

Legal research draws upon a variety of sources to access relevant data:

1. ***Primary Sources:*** Original legal materials that establish legal rules, principles, and precedents, such as statutes, case law, regulations, constitutions, and treaties. Primary sources provide authoritative legal data directly applicable to specific legal issues or disputes.
2. ***Secondary Sources:*** Analytical and explanatory materials that interpret, explain, and contextualize primary legal sources, such as legal encyclopedias, treatises, law reviews, and scholarly writings. Secondary sources offer additional insights, commentary, and analysis to supplement primary legal data.
3. ***Electronic Databases:*** Online legal research platforms and databases, such as Westlaw, LexisNexis, Bloomberg Law, and HeinOnline, provide access to a vast array of legal materials, cases, statutes, regulations, and scholarly publications. Electronic databases enable researchers to search, retrieve, and analyze legal data efficiently using advanced search functionalities.
4. ***Government Publications:*** Official publications and documents issued by government agencies, legislative bodies, and judicial institutions, such as congressional reports, administrative decisions, court opinions, and legislative records. Government publications serve as valuable sources of legal data on legislative intent, regulatory actions, and judicial interpretations of the law.

The sources of data can be classified into two types: statistical and non-statistical.

Statistical sources refer to data that is gathered for some official purposes, incorporate censuses, and officially administered surveys. Non-statistical sources refer to the collection of data for other administrative purposes or for the private sector.

In legal research, tools of data collection refer to the methods, techniques, instruments, and resources used to gather, organise, and analyse data relevant to legal issues, cases, statutes, regulations, or legal phenomena. These tools enable researchers to access, collect, and interpret data from various sources, including legal texts, case law, statutes, regulations, empirical studies, surveys, interviews, and other sources of legal information. Technology plays a significant role in modern data collection, with software applications, mobile apps, sensors, and data collection platforms facilitating efficient and accurate data capture. Here's a detailed explanation of the tools of data collection in legal research:

1. **Legal Databases and Research Platforms:**

   Legal databases and research platforms, such as Westlaw, LexisNexis, Bloomberg Law, and HeinOnline, provide access to extensive collections of legal materials, including cases, statutes, regulations, legal commentary, and secondary sources.

   Researchers utilise advanced search functionalities, keyword searching, citation searching, and filtering options to locate relevant legal authorities and gather data on specific legal topics or jurisdictions.

1. **Library Catalogues and Online Catalogs:**

   Library catalogues and online catalogues allow researchers to search for legal materials available in law libraries, university libraries, and online repositories.

   Researchers can search for books, journals, treatises, legal encyclopaedias, and other secondary sources related to their research topics, as well as access digitised collections of legal documents and historical materials.

2. **Case Law Reporters and Legal Periodicals:**

   Case law reporters, legal periodicals, and law journals provide access to judicial opinions, court decisions, and legal commentary on a wide range of legal issues.

   Researchers use case law reporters to locate relevant judicial precedents, analyse legal reasoning, and extract legal principles applicable to their research questions. Legal

periodicals and law journals offer scholarly articles, commentaries, and analyses on current legal topics and trends.

3. **Statutory Databases and Legislative Records:**

   Statutory databases and legislative records provide access to statutes, legislative acts, ordinances, regulations, and legislative history materials.

   Researchers utilise statutory databases to search for relevant statutory provisions, track legislative updates, review bill texts, and examine legislative history documents, such as committee reports, floor debates, and legislative hearings.

4. **Empirical Research Tools and Surveys:**

   Empirical research tools, such as survey instruments, questionnaires, and interview protocols, facilitate the collection of data for empirical studies on legal phenomena, behaviours, attitudes, or outcomes.

   Researchers design and administer surveys to legal professionals, stakeholders, or members of the public to gather data on legal practices, perceptions, or experiences related to specific legal issues or policies.

5. **Legal Research Guides and Pathfinders:**

   Legal research guides and pathfinders provide curated lists of recommended resources, databases, and research strategies tailored to specific legal topics, jurisdictions, or types of legal research.

   Researchers consult research guides to identify authoritative sources, locate relevant materials, and navigate the research process effectively, especially when exploring new or complex legal topics.

6. **Government Publications and Official Records:**

   Government publications, official records, and administrative documents issued by government agencies, legislative bodies, and judicial institutions serve as valuable sources of legal information and data.

   Researchers access government publications to review administrative decisions, regulatory actions, court opinions, legislative reports, and official records related to specific legal issues, policies, or regulations.

7. **Interdisciplinary Research Methods and Tools:**

Interdisciplinary research methods and tools from other disciplines, such as sociology, economics, psychology, political science, or history, may be employed to study legal phenomena within broader social contexts.

Researchers utilise qualitative or quantitative research methods, such as content analysis, case studies, surveys, interviews, or statistical analysis, to collect and analyse data on legal issues and their societal implications.

In summary, tools of data collection in legal research encompass a wide range of methods, techniques, instruments, and resources used to gather, organise, and analyse data relevant to legal issues, cases, statutes, regulations, or legal phenomena. Researchers utilise legal databases, library catalogues, case law reporters, statutory databases, empirical research tools, legal research guides, government publications, and interdisciplinary research methods to access, collect, and interpret data from various sources, contributing to the advancement of legal scholarship, practice, and policy-making.

Questionnaire is as an instrument for research, which consists of a list of questions, along with the choice of answers, printed or typed in a sequence on a form used for acquiring specific information from the respondents.In general, questionnaires are delivered to the persons concerned either by post or mail, requesting them to answer the questions and return it. Informants are expected to read and understand the questions and reply in the space provided in the questionnaire itself. The questionnaire is prepared in such a way that it translates the required information into a series of questions, that informants can and will answer.

The questionnaires are the fundamental instrument for gathering information in review research. Fundamentally, it is a bunch of standardized questions, frequently called items, which follow a decent plan to gather individual information around at least one explicit theme. Questionnaire is described as “a document that contains a set of questions, the answer to which are to be provided personally by the respondents”

Characteristics of a Good Questionnaire

A good questionnaire must be clear, concise, and unbiased. The most important aspect is the ease of understanding the questions. Here are some points:

1. **Clarity:** Questions should avoid jargon or ambiguity. Respondents must easily understand what is being asked.

2. **Relevance:** Each question should directly contribute to the research objective. Irrelevant questions can confuse participants and dilute the data quality.
3. **Simplicity:** Use simple language and straightforward sentence structures. Complicated questions can lead to misinterpretation.
4. **Objectivity:** Questions should be neutral and unbiased, avoiding leading or suggestive language that might influence respondents' answers.
5. **Conciseness:** Be precise. Long, complex questions can overwhelm respondents. Aim for brevity while ensuring the question captures the necessary information.
6. **Specificity:** Questions should focus on one topic at a time. Try not to combine multiple ideas into a single question.
7. **Structured Responses:** Offer clear response options. Whether multiple-choice, Likert scale, or open-ended, structured responses aid in easy analysis.
8. **Pilot Testing**: Always conduct a pilot test before deploying the questionnaire widely. This helps identify confusing questions or response options, ensuring clarity for all participants.
9. **Consideration of Respondent Perspective**: Put yourself in the respondents' shoes and frame questions from their point of view. Questions should be relevant and relatable to the participants, encouraging honest responses.
11. **Adaptability:** Questionnaires should be adaptable to diverse formats (online, paper, interviews) and audiences. Flexibility ensures broader participation and diverse insights.

10. Case Study –

a. D.K. Basu v. State of West Bengal

[(1997) 1 SCC 417 AIR 1997 SC 610 1996 (9) SCALE)

Justice Kuldip Singh & Justice A.S. Anand

Dr. D.K Basu, Executive Chairman of the Legal Aid Services, West Bengal, wrote a letter to the Chief Justice of India, saying that torture and deaths in police custody are widespread and efforts are often made by the authorities to hush up the matter. Because of this, custodial crime goes unpunished and therefore flourishes. Some newspaper reports published in the Telegraph,

Statesman and Indian Express newspapers were also attached to support the contention. Basu urged the Supreme Court to examine the issue in depth requested to –

(i) develop custody jurisprudence and lay down principles for awarding compensation to the victims of police atrocities,

(ii) formulate means to ensure accountability of those responsible for such occurrences.

The Supreme Court treated the letter as a writ petition. While the writ was under consideration, the Supreme Court received another report about a death in police custody in Uttar Pradesh. This prompted the Court to issue notices to all state governments and the Law Commission of India to submit suggestions on how to combat this all-India problem.

Observations of the Court

Custodial torture is a naked violation of human dignity, the Supreme Court said. The situation is aggravated when violence occurs within the four walls of a police station by those who are supposed to protect citizens. The Court accepted that the police have a difficult task in light of the deteriorating law and order situation; political turmoil; student unrest; and terrorist and underworld activities. They agreed that the police have a legitimate right to arrest a criminal and to interrogate her/him in the course of investigation. However, the law does not permit the use of third-degree methods or torture on an accused person. Actions of the State must be right, just and fair, torture for extracting any kind of confession would neither be right nor just not fair.

(i) The Right to Life guaranteed by our Constitution includes the right to live with human dignity. The State is not only obliged to prosecute those who violate fundamental rights, it also has a duty to pay monetary compensation to repair the wrong done by its agents in not being able to discharge their public duty of upholding people's rights. Compensation, the Court said, is not be paid by way of damages us in a civil case (the victim is free to file a civil suit to privately recover damages from the wrongdoer for loss of earning capacity) but under public law for breach of duty by the Stare not being able to protect its citizens. However, there can be no strait jacket formula as each case has its own peculiar facts and circumstances.

(ii) The Court recognized that the worst violations of human rights take place during investigation when the police use torture and third-degree methods to get

confessions. In such instances, arrests are either disguised by not recording them or showing detention as prolonged interrogation. The Court stressed that no matter what the circumstances, the State or its agents are not allowed to assault or torture people. They then laid down an elaborate set of guidelines in respect of arrest and interrogation. The Court directed that the guidelines, which are given below, should be circulated to the Director General of Police (DGP) and the Home Secretary of every State and Union Territory and it shall be their obligation to have them put up in every police station at a conspicuous place.

Supreme Court Directives

Following directives/guidelines have been laid down by the Court to be followed in all cases of arrest or detention till legislative measures are taken:

1. The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.
2. The police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.
3. A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock up. shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
4. The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Ad Organization in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
5. The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

6. An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names land particulars of the police officials in whose custody the arrestee is.
7. The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The 'Inspection Memo' must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
8. The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
9. Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
10. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
11. A police control room should be provided at all district and State headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

The court also opined that failure to comply with the above requirements, apart from rendering the official concerned liable for departmental action, would also render him liable to be punished for contempt of court and the proceedings for contempt of court could be instituted in ant High Court of the country, having territorial jurisdiction over the matter.

Supreme Court's further observations regarding Compensation

(i) It is now a well-accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometime perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is victoriously liable for their acts. The claim of the citizen is based on the principle of strict liability

to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer.

(ii) In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damage which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortious act committed by the functionaries of the State.

(iii) The quantum of compensation will, of course, depend upon the peculiar facts of each case and no straitjacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.

b. Geeta Hariharan v. Reserve Bank of India

[AIR 1999 SC 1149: (1999) 2 SCC 225]

Dr. AS Anand, C.J. and M. Srinivasan and Umesh C. Banarjee. JJ

Issue

The constitutional validity of Section 5(a) of the Hindu Minority and Guardianship Act and Section 19(b) of the Guardians and Wards Act were challenged as being violative of Articles 14 and 15 of the Constitution.

Facts

The petitioner and Dr Mohan Ram were married in Bangalore in 1982 and had a son in July 1984. In December 1984 the petitioner applied to the Reserve Bank of India (RBI) for 9% Relief Bond to be held in the name of the son indicating that she, the mother, would act as the natural guardian for the purposes of investments. RBI returned the application advising the petitioner either to produce an application signed by the father or a certificate of guardianship from a competent authority in her favour to enable the bank to issue bonds as requested.

This petition was related to a petition for custody of the child stemming from a divorce proceeding pending in the District Court of Delhi. The husband petitioned for custody in the proceedings. The petitioner filed an application for maintenance for herself and the minor son, arguing that the father had shown total apathy towards the child and was not interested in the welfare of the child. He was only claiming the right to be the natural guardian without discharging any corresponding obligation.

On these facts, the petitioner asks for a declaration that the provisions of s. 6(a) of the Hindu Minority and Guardianship Act of 1956 along with s. 19(b) of the Guardians and Wards Act violated Articles 14 and 15 of the Constitution if India.

Legal Arguments and Laws

The applicant argued that the communication from the RBI is arbitrary and was opposed to the basic concept of justice under Article 32 of the Constitution. They therefore challenged the validity of s. 6 of the Hindu Minority and Guardianship Act of 1956. Further they argued that the provisions of s. 6 of the Act seriously disadvantageous for the women and discriminate against women in the matter of guardianship rights, responsibilities and authority in relation to their own children.

Section 6(a) of the Hindu Minority and Guardianship Act (HMGA) says "Section 6. Natural Guardian of Hinds minors. The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property) are:

(a) In the case of boy or an unmarried girl - the father, and after him, the mother provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother

Section 19(b) of the Guardians and Wards Act says:

"Section 19. Guardian not to be appointed by the court in certain cases. - Nothing in this chapter shall authorize the court....to appoint or declare a guardian of the person....

(b) Of a minor whose father is living and is not in the opinion of the court, unfit to be a guardian of the person of the minor, or

Decision

In this case, instead of striking down Sec. 6(a) of the HMGA as also Sec. 19(b) of the Guardians and Wards Act as unconstitutional, the court choose to construe the provisions in a manner so as not to offend the constitutional mandate of gender equality and non-discrimination

Giving the opinion of the Court, Banarjee J asserted the predominance of the child's welfare in all considerations. He considered the precedent of ***Gajre v Pathankhan***,[47] in which, although the father was alive, he was not taking any interest in the affairs of the child. In that case the mother was ruled to be the natural guardian of her minor daughter. He set out that the Hindu law and the Act held that the father is the natural guardian and after him the mother but in the above case, the Court held the opposite.

The judgment in ***Gajre v Pathankhan*** considered that: "... a rigid insistence of strict statutory interpretation may not be conducive for the growth of the child, and welfare being the predominant criteria, it would be a plain exercise of judicial power of interpreting the law so as to be otherwise conducive to a fuller and better development and growth of the

Justice Banerjee noted that the judge in Gajre v. Pathankhan allowed the mother to be the natural guardian: "... but without expression of any opinion as regards the true and correct interpretation of the word 'after' or deciding the issue as to the constitutionality of the provision us contained in Section 6(a) of the Act of 1956. He felt strongly that a long-established law should not easily be set aside, that a key point was interpretation of the word "after"; and that: "... the word did not necessarily mean after the death of the father, on the contrary, it [means] 'in the absence of be it temporary or otherwise or total apathy of the father towards the child or even inability of the father by reason of ailment or otherwise."

[47] 1970) 2 SCC 717

Adopting the rule of harmonious construction, it held that ascribing the literal meaning to the word 'after' cannot arise having due regard to the object of the Act and the constitutional guarantee of gender equality, since any other interpretation would render the statute void which ought to be avoided. Subsequently, he dismissed the petition regarding the constitutionality of the Act but directed the Reserve Bank to formulate appropriate methodology in the light of his observations. He also instructed the District Court, Delhi to take account of his comments when considering custody and guardianship of the minor child.

Comment

The judgment has given an extended meaning to the word "after" to include certain situations wherein the mother can act as guardian even while the father is alive; however, the primary clause still stands and the mother will come only after the father. What if the father and mother are living together and the father is not 'absent' within the meaning of the term as given by the court? Here the court missed an opportunity to confer equal guardianship right on the mother.

c. Vishakha v. State of Rajasthan

[AIR 1997 SC 3811 FT 1997 (7) SC 184]

J.S. Verma, CJI, Mrs Sujata V. Manohar and B.N. Kirpal, JJ

Facts of the Case

Bhanwari Devi was a village-level social worker (*saathin*) of a development programme run by the State Government of Rajasthan, fighting against child and multiple marriages in villages. As part of this work, Bhanwari, with assistance from the local administration, tried to stop the marriage of Ramkaran Gujjar's infant daughter who was less than one year old. The marriage took place nevertheless, and Bhanwari earned the ire of the Gujjar family. She was subjected to social boycott, and in September 1992 five men including Ramkaran Gujjar, gang raped Bhanwari in front of her husband, while they were working in their fields. The days that followed were filled with hostility and humiliation for Bhanwari and her husband. The only male doctor in the Primary Health Centre refused to examine Bhanwari and the doctor at Jaipur only confirmed her age without making any reference to rape in his medical report. At the police station, the women constables taunted Bhanwari throughout the night. It was past midnight when

the policemen asked Bhanwari to leave her lehenga behind as evidence and return to her village. She was left with only her husband's bloodstained dhoti to wear. Their pleas to let them sleep in the police station at night, were turned down. The trial court acquitted the accused, but Bhanwari was determined to fight further and get justice. She said that she had nothing to be ashamed of and that the men should be ashamed due to what they had done. Her fighting spirit inspired fellow saathins and women's groups countrywide. In the months that followed they launched a concerted campaign for justice for Bhanwari. On December 1993, the High Court said, "it is a case of gang-rape which was committed out of vengeance". As part of this campaign, the groups had filed a petition in the Supreme Court of India, under the name 'Vishaka', asking the court to give certain directions regarding the sexual harassment that women face at the workplace. The result is the Supreme Court judgment, which came on 13th August 1997, and gave the Vishaka guidelines.

Observations of the Court

It is now an accepted rule of construction that regard must be had to international conventions and norms for constructing domestic law when there is no inconsistency between them and there is a void in the domestic law. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantees. This is implicit from Article 51(c) and the enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution.

Guidelines & Norms laid down by the Supreme Court

Having regard to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993, taking note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and

that enactment of such legislation will take time, it is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women. Following are the guidelines-

1. **Duty of the Employer or other responsible persons in work places and other institutions:** It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.
2. **Definition:** For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:
    a) Physical contact and advances;
    b) A demand or request for sexual favours;
    c) Sexually coloured remarks;
    d) Showing pornography;
    e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature

Where say of these acts is committed in circumstances where-under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in Government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. **Preventive Steps:** All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality to this obligation they should take the following steps-
    (a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.

(b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. **Criminal Proceedings:** Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

   In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with com plaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrate or their own transfer.

5. **Disciplinary Action:** Where such conduct amount to misconduct in employment, a defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. **Complaint Mechanism:** Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. **Complaints Committee:** The complaint mechanism referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special councilor or other support service, including the maintenance of confidentiality.

   The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment. The Complaints Committee must make an annual report to the Government department

concerned of the complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department

8. **Workers' Initiative:** Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and should be affirmatively discussed in Employer-Employee Meetings
9. **Awareness:** Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.
10. **Third Party Harassment:** Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

d. People's Union for Civil Liberties v. Union of India

[AIR 1997 SC 568 (1997) 1 SCC 301]

Kuldip Singh and S. Saghir Ahmad, JJ

The People's Union for Civil Liberties [PUCL] filed a writ petition with the Supreme Court challenging the constitutional validity of Section 5(2) of the Indian Telegraph Act, 1882, which authorizes the government to intercept messages on the occurrence of any public emergency or in the interest of public safety, if it is satisfied that it is necessary or expedient to do so in five given situations. PUCL approached the Court on the basis of a report on tapping of politicians' telephones by the Central Bureau of Investigation [CBI]. It asked for the provisions of Section 5(2) to be interpreted in the light of fundamental rights and read down to include procedural safeguards that would discount arbitrariness and prevent indiscriminate phone tapping by law enforcement or investigating agencies. This case is also known as "phone tapping case".

Observations of the Court

The right to have telephone conservation in the privacy of one's home or office is part of the Right to Life and Personal Liberty enshrined in Article 21 of the Constitution, which cannot be curtailed except according to the procedure established by law. The Supreme Court asserted that telephone tapping amounts to an invasion of privacy in violation of this core right. The Freedom of Speech and Expression guaranteed by Article 19 of the Constitution includes the right to express one's convictions and opinions freely by word of mouth. When a person is talking on the telephone she he is exercising this freedom.

Article 17 of the International Covenant on Civil and Political Rights, 1966 expressly forbids arbitrary interference with privacy, family, home or correspondence and stipulates that everyone has the right to protection of the law against such intrusions. The Supreme Court affirmed that international law, if it does not conflict with national legislation will be deemed as municipal [domestic/national] law. Elaborating the scope of Section 5 of the Indian Telegraph Act, 1882 the Court clarified that this section does not confer unguided and unbridled power on investigating agencies to invade a person's privacy. Telephone tapping is only permitted in the following two circumstances

1. **On the occurrence of a Public Emergency**: This means the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action.
2. **In the interest of Public Safety**: This means the state or condition of freedom from danger for the people at large.

The test of whether the above circumstances exist would be apparent to a reasonable person. The Supreme Court strongly asserted, that if the two circumstances are not in the interests of

(i) the sovereignty and integrity of India;

(ii) the security of the State;

(iii) friendly relations with foreign States;

(iv) public order;

(v) preventing incitement to the commission of an offence existence;

the Central or State Government or their duly authorized officers cannot resort to phone tapping.

Supreme Court Directives

The Supreme Court laid down the following procedural safeguards for the exercise of power under Section 5(2) of the Indian Telegraph Act, 1882

1. Tapping of telephones is prohibited without an authorizing order from the Home Secretary, Government of India or the Home Secretary of the concerned State Government. In an urgent case, the power may be delegated to an officer of the Home Department of the Central and State Governments not below the rank of Joint Secretary.
2. The copy of the order shall be sent to Review Committee within one week of the passing of order.
3. The order, unless it is renewed shall cease to have authority at the end of two months from the date of issue. Though the order may be renewed, it cannot remain in operation beyond six months.
4. Telephone tapping or interception of communications must be limited to the address(es) specified in the order or to address(es) likely to be used by a person specified in the order.
5. The authority issuing the order shall maintain the rounds of the intercepted communications, the extent the material to be disclosed, number of persons, their identity to whom the material is disclosed
6. The Review Committee shall on its own, within two months, investigate whether there is or has been a relevant order under Sec.5(2) of the Act of 1882.
7. If on investigation, the Review Committee concludes that there has been a contravention of the provisions of Sec. 5(2) of the Act, i shall set aside the order.
8. If on investigation, the Review Committee comes to the conclusion that there has been no contravention of the provisions of Sec. 5(2) of the Act, it shall record the finding to that effect.
9. All copies of the intercepted material must be destroyed as soon es their retention is not necessary under the terms of Section 5 (2) of the Indian Telegraph Act, 1882

Comment

With the growth of highly sophisticated communication technology the right to hold telephone conversation in the privacy of one's home or office without interference is increasingly

susceptible to abuse. The right to privacy is a sacred and cherished right. There must be strong, cogent and legally justifiable reasons for law enforcement agencies to interfere with this right. Even then, proper procedure must be followed as intrusion into a person's home, professional or family life in the name of investigation or domiciliary visits without a proper basis is not permitted.

e. Air India v. Nargesh Mirza

[AIR 1981 SC 1829 : (1981) 4 SCC 335]

S. Murtaza Fazal Ali, A. Varadarajan and A.N. Sen, JJ

The case of Air India v Nargesh Meerza revolves around a legal challenge brought forth by a group of Air Hostesses (AHs) against the two corporations employing them. The central issue at hand is the alleged violation of their fundamental right to equality under Article 14 of the Constitution of India.

The case pertains to the service regulations governing the retirement age, termination upon marriage or pregnancy, and other conditions for Air Hostesses in both Air India International and Indian Air Lines.

Facts of Air India v Nargesh Meerza

Under Section 3 of the Air Corporation Act of 1953, the Central Government established two corporations: Air India International and Indian Air Lines. Air India (AI) operated international flights, while Indian Air Lines (IAC) operated domestic flights within the country.

Air Hostesses employed by Air India were subject to Regulations 46 and 47 of the Air India Employees Service Regulations. On the other hand, Air Hostesses employed by IAC were governed by the Indian Airlines Service Regulation No. 12.

Under AI, Air Hostesses retired from service under the following circumstances:

(a) Upon reaching the age of 35 years.

(b) If they got married within four years of service.

(c) On experiencing their first pregnancy.

The retirement age for Air Hostesses could be extended up to ten years if the Managing Director granted yearly extensions at their discretion under Regulation 47. In such cases, an Air Hostess could retire at the age of 45 years.

Under IAC, Air Hostesses were subject to similar service conditions, except that the retirement age for permanent Air Hostesses could be extended up to 40 years.

Issues

(i) Do Regulations 46 & 47 violate Articles 14,15 16 of the Constitution of India and thus ultra vires in whole or part?

(ii) Can discretionary powers, as enumerated under Regulation 47, be deemed excessive delegation?

Laws Applied in Air India v Nargesh Meerza

Article 14 of The Constitution of India

Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth.

Article 15(1) of The Constitution of India

The State shall not discriminate against any citizen based on religion, race, caste, sex, place of birth or any of them.

Article 16 of The Constitution of India

Equality of opportunity in matters of public employment

Regulation 46 Air India Employees Service Regulations

Retiring Age:

Subject to the provisions of sub-regulation (ii) hereof, an employee shall retire from the service of the Corporation upon attaining the age of 58 years, except in the following cases when they shall retire earlier:

(c) An Air Hostess, upon attaining age 35 years or on marriage if it takes place within four years of service or on first pregnancy, whichever occurs earlier.

Regulation 47 Of Air India Employees Service Regulations

Extension of Service.

Notwithstanding anything contained in Regulation 46, the services of any employee may, at the option of the Managing Director but on the employee being found medically fit, be extended by one year at a time beyond the age of retirement for an aggregate period not exceeding two years, except in the case of Air Hostesses and Receptionists where the period will be ten years and five years respectively."

Arguments by the Air Hostesses (Petitioners)

In their transferred case and writ petitions, it was argued on behalf of the Air Hostesses (AHs) in Air India v Nargesh Meerza that those employed by either Corporation belonged to the same class of service as the AFPs (Airline Flight Pursers) and other members of the cabin crew, performing identical or similar duties. Therefore, any discrimination between these two groups of employees in similar circumstances would violate Article 14 of the Constitution.

The contentions put forward were as follows:

- **Inter-Service Discrimination:** AHs serving on flights to the United Kingdom faced discrimination compared to those on other Air India flights.
- **Hostile Discrimination Based on Sex or Disabilities Arising from Sex:** AHs have been selected explicitly for discriminatory treatment based on their sex or related disabilities, thus infringing upon the provisions of Article 15(1) and Article 16(4) of the Constitution.
- **Unreasonable Termination:** The termination of AHs' services on the grounds of pregnancy or marriage within four years was deemed to be unreasonable, arbitrary and in violation of Article 14(5) of the Constitution.
- **Lack of Promotional Opportunities:** AHs were denied promotional opportunities available to male cabin crew members.

Arguments by the Management (Respondents)

On the other hand, the Management in Air India v Nargesh Meerza contested the petitions with the following arguments:

- **Distinct Category:** The nature of job functions, mode of recruitment, qualifications, promotional avenues and retirement circumstances of AHs place them in a separate category from the pursers, making any question of discrimination or infringement of Article 14 irrelevant, as it applies only to discrimination within the same class.
- **Sex-Based Recruitment:** The recruitment of AHs is not solely based on sex but is influenced by various other considerations, so Article 15(2) of the Constitution does not apply.
- **Validity of Regulations:** Regulation 46 of the AI Regulations and IAC Regulation 12 have been upheld by the Khosla and Mahesh Awards, having statutory force and being non-arbitrary or discriminatory.
- **Reasonable Restrictions:** The bar on pregnancy and marriage is considered a reasonable restriction in the public's interest, considering the prevailing circumstances in India.
- **Practical Difficulties:** Removing the bar on marriage or pregnancy would lead to significant practical difficulties and substantial expenditure for the Corporations to make necessary arrangements.

Judgement in Air India v Nargesh Meerza

Partially granting the petitions, the Court in Air India v Nargesh Meerza made the following decisions:

The impugned provisions were found to exhibit clear official arbitrariness. However, as the objectionable part of the Regulation can be separated from the rest of the Regulation, there is no need to strike down the entire Regulation.

That portion of Regulation 47 in Air India v Nargesh Meerza, which grants the Managing Director the option to extend the service of an Air Hostess, is deemed invalid. Consequently, Air Hostesses, unless the provision is suitably amended to comply with Article 14 of the Constitution, will continue to retire at the age of 45 years. The Managing Director will be obligated to grant yearly extensions automatically for ten years if the Air Hostess is found to be medically fit. This ensures that the Managing Director cannot discriminate between different Air Hostesses.

The last part of Regulation 46 (i) (c) is struck down. The provision "or on first pregnancy, whichever occurs earlier" is declared unconstitutional, void and in violation of Article 14 of the Constitution. Consequently, this part will be deleted. However, the Corporation can make suitable amendments to rectify the situation.

It is well-established that Article 14 of the Constitution prohibits hostile discrimination but not reasonable classification. When individuals who are equals or persons in similar circumstances are treated differently, it constitutes discrimination under Article 14. On the other hand, if individuals who are unequal or belong to different classes are treated differently, it does not amount to discrimination under Article 14.

If there are distinct and separate classes with different conditions of service and incidents, the question of discrimination does not arise. However, if discriminatory treatment is applied to members of the same class, discriminating against one compared to others, then Article 14 is indeed applicable.

The following propositions can be derived from an analysis and examination of cases decided by the Court in Air India v Nargesh Meerza:

- A strict and dogmatic approach should be avoided when considering the fundamental right to equality of opportunity. Differences in scales of pay, service terms, leave, etc., introduced for different or dissimilar posts may not necessarily violate Article 14. If the class or categories of service are fundamentally different in purpose and essence, Article 14 will not apply.
- Article 14 prohibits hostile discrimination but allows for reasonable classification. If individuals belonging to a particular class are treated differently due to their special attributes, qualities, recruitment mode, etc., to advance and support members of backward classes with a close nexus to the objectives sought, Article 14 would not be applicable.
- Article 14 is relevant when equals are treated differently without any reasonable basis.
- If equals and unequal are treated differently, Article 14 would not be applicable.
- Even if there is one class of service with several categories having different attributes and incidents, each category becomes a separate class by itself. In such cases, no

discrimination arises if there is a difference in treatment between such a category and the general members of other classes.

To determine whether a separate category has been carved out of a class of service, the following circumstances are usually examined in Air India v Nargesh Meerza:

- The nature, mode and manner of recruitment of the particular category.
- The classification of the particular category.
- The nature and character of the posts and promotional avenues.
- The unique attributes of the particular category are not found in other classes and similar factors.

It is difficult to establish a universal rule, but the mentioned circumstances can serve as illustrative guidelines for determining the question.

The Court has referred to cases such as ***Kathi Raning Rawat v. The State of Saurashtra***[48], ***All India Station Masters' and Assistant Station Masters' Association and Ors. v. General Manager,***[49] ***Central Railways and Ors., State of Jammu and Kashmir v. Triloki Nath Khosa and Ors***.[50] and ***United States v. James Griggs Raines***[51], as references in their analysis.

A comparison of the mode of recruitment, classification, promotional avenues and other factors reveals that Air Hostesses (AHs) constitute a completely separate category from Airline Flight Pursers (AFPs) in many respects, with different service conditions. Furthermore, the retiral benefits available to AHs are distinct from those provided to AFPs.

Considering various circumstances, incidents, service conditions and promotional avenues of AFPs, it becomes evident that the cabin crew members form a distinct and separate class governed by a different set of rules, regulations and conditions of service.

The declaration made by the Central Government through its notification dated 15-6-79 serves as presumptive proof that no discrimination was made on the ground of sex alone concerning service and other types of remuneration.

---

[48] AIR 1952 SUPREME COURT 123
[49] AIR 1960 SUPREME COURT 384
[50] AIR 1974 SUPREME COURT 1
[51] 362 U.S. 17 (1960)

Articles 15(1) and 16(2) prohibit discrimination based solely on sex. However, they allow the State from making distinctions based on sex when coupled with other considerations.

The argument presented on behalf of AHs in Air India v Nargesh Meerza that the conditions of service concerning retirement, etc., constitute discrimination solely based on sex is overruled. These conditions of service do not violate Article 16.

The provisions in the Regulations that require Air Hostesses not to marry within four years of service, failure of which would lead to termination of their services, are not deemed unreasonable or arbitrary.

Terminating an Air Hostess's services for becoming pregnant after being in service for four years is considered compelling her not to have children, interfering with the natural course of human nature. Such termination is considered a callous and cruel act, insulting Indian womanhood, a cherished institution. This action is seen as highly unethical and selfish, violating human values. The provision is considered manifestly unreasonable, arbitrary, unfair and violative of Article 14.

The rule could be amended to terminate the services of an Air Hostess on her third pregnancy, provided she already has two living children. Such an amendment would be both beneficial and reasonable for two reasons. Firstly, preventing a third pregnancy with two existing children would be in the best interest of the health of the Air Hostess and the well-being of her children. Secondly, every country needs to encourage and maintain family planning programs at sufficient levels.

The factors considered while making decisions about retirement age should be relevant and closely related to the nature of the organisation and the duties of the employees. If the authority responsible for setting the retirement age considers irrational or illogical factors, the decision is subject to serious scrutiny.

The Court in Air India v Nargesh Meerza has referred to various cases, such as ***General Electric Company Martha v. Gilbert***[52], ***State of West Bengal v. Anwar Ali Sarkar***[53], ***A.S. Krishna v. State of Madras***[54], ***Cleveland Board of Education v. Jo Carol La Fleur***[55], ***M/s. Dwarka Prasad***

[52] 429 U.S. 125 (1976)
[53] AIR 1952 SC 75
[54] [1957] 1 S.C.R. 399

Laxmi Narain v. The State of Uttar Pradesh and Ors[56]. and ***Maneka Gandhi v. Union of India***[57] for their analysis.

In modern times, with advancing mechanical technology, it may not be accurate to claim that a woman loses her normal facilities or her efficiency is impaired at the age of 35, 40, or 45 years. Such a proposition would vary from individual to individual and cannot be generalised. Similarly, there may be cases where an AFP might have a weak and unhealthy constitution and may not be able to function effectively until age 58, which is the retirement age for AFPs according to the Regulation. The distinction made by the Regulation regarding the retirement age between Air Hostesses and Airline Flight Pursers is not discriminatory since Air Hostesses have been recognised as a separate class.

The fixation of the retirement age of Air Hostesses in Air India v Nargesh Meerza, who fall within a particular class, depends on various factors that employers must consider. In the present case, the Corporations have presented justifications for keeping the retirement age at 35 (extendable up to 45 years). However, the Regulation grants the Managing Director unbridled and unguided discretion to extend the age of Air Hostesses, which raises concerns about excessive delegation of powers. A discretionary power may not necessarily be discriminatory. Still, when a statute confers power on an authority without laying down any guidelines or principles, such power may be deemed violative of Article 14.

In support of the analysis, the Court referred to the cases of ***Lala Hari Chand Sard v. Mizo District Council and Anr.***[58]. and ***State of Mysore v. SR Jayaram.***[59]

12. Short Notes -

i. Use of Law Library:

Law libraries are very useful and a vital resource for various individuals and organisations which are involved with legal matters.

---

[55] 414 U.S. 632 (1974)
[56] **AIR 1954 SUPREME COURT 224**
[57] AIR 1978 SC 597
[58] **1967 SCR (1)1012**
[59] AIR 1968 SC 346

Features of law libraries:

- These are a huge collection of legal resources including statutes, case laws and legal journals. Lawyers and judges use these materials for legal research, precedents and to understand legal concepts & prepare cases. It also provides access to legal forms and templates, aiding in the drafting of contracts, wills, and other legal documents. Many law libraries offer CLE programs (Continuing Legal Education) and resources to help legal professionals stay updated on legal developments and maintain their licenses.
- Most of the law students rely on law libraries to conduct in-depth research for coursework, assignments, and research papers. It provides access to casebooks, hornbooks, and other study materials essential for exam preparation for the students.
- Individuals representing themselves in legal matters can access legal information, forms, and guides in law libraries i.e. self-represented litigants (Pro Se).
- It provides access to legislative history, regulations, and case law to inform policy decisions for Government Agencies and Public Officials. They also utilize these libraries to conduct legal analysis and interpret laws and regulations.
- Law libraries incorporate historical legal documents, allowing researchers to study legal history and social change. These also contain records related to property ownership, and other historical legal matters.

In summary, law libraries serve as invaluable resources for a diverse range of individuals and organizations, facilitating legal research, education, and understanding.

ii. Bibliography:

Bibliography is a list of all the sources consulted to write paper or research project. It is giving credit to the authors and creators whose work helped to understand the topic.

Features of Bibliography:

- It shows that the research is not plagiarized on anyone's work. It provides a starting point for anyone who wants to learn more about the topic.
- This includes the publisher, publication date, and location for books, journal title, volume etc. and website URL and access date for online sources.

- There are different types of bibliographies namely Annotated bibliography which includes a brief summary or evaluation of each source. And Works cited which lists only the sources that were directly cited in your paper.

It is a crucial part for any paper or academic work. It gives an overall idea how far one has researched on any topic.

iii. Hypothesis:

A hypothesis is an explanation for a phenomenon that is based on observations and existing knowledge. It is a starting point for research, an answer to a question that can be tested through experimentation or further investigation.

Features of hypothesis:

- It is testable i.e. possible to design an experiment or study to gather evidence that supports or refutes the hypothesis.
- It is falsifiable which means it is possible to prove the hypothesis wrong.
- It is scientific in nature. It is clear and concise, stating the expected relationship between variables.
- There are two types of hypotheses:

Null hypothesis - This states that there is no significant difference or relationship between variables. It is often the default assumption.

Alternative hypothesis - This states that there is a significant difference or relationship between variables. It is the hypothesis that the researcher is trying to prove.

A hypothesis is not a proven fact. It is a starting point for research, and it may be supported or rejected based on the evidence gathered.

iv. Analysis of data:

Analysis of data is the process of systematically applying statistical and logical techniques to describe and evaluate data.

Features of analysis of data:

- There are various steps of data analysis –
    - Data collection
    - Data cleaning
    - Data exploration

- Data modelling
- Data visualization

- There are four types of data analysis –
  - Descriptive analysis
  - Diagnostic analysis
  - Predictive analysis
  - Perspective analysis
- There are various Applications of Data Analysis in different fields like businesses, healthcare, finance, science as well as in social sciences.

It plays a crucial role in decision-making processes across various industries. By extracting valuable insights from data, organizations can improve efficiency, reduce costs, and gain a competitive edge.

v. Different types of Legislation

Legislation is the process of making laws. It can be divided into two main types:

- **Primary Legislation:** It is the acts of Parliament i.e. making statutes. These laws are enacted by a sovereign legislative body, such as the Parliament of India or the UK Parliament. They are considered the supreme form of law and can override existing laws.
- **Secondary Legislation:** They are the delegated legislation. This type of legislation is created by bodies or individuals delegated the power to make laws by primary legislation. It is often used to implement the details of primary legislation. For example, statutory instruments, by-laws etc.
- There are other types of legislations as well namely Public General Acts, Private Acts, Constitutional laws, ordinary laws etc. These all are made by the legislation of their concerned States

vi. Ratio Decidendi:

Ratio Decidendi is a Latin phrase that translates to "reason for deciding." In legal terms, it refers to the legal principle or rule of law that a court applies to the facts of a case to reach a judgment. It is the crucial part of a legal judgment that sets a precedent for future cases.

Features of Ratio Decidendi:

- **Binding Precedent** - The ratio decidendi of a higher court is binding on lower courts in the same jurisdiction. This means that lower courts must follow the legal principle established in the higher court's decision.
- **Distinguishing a Case** - If a lower court finds material differences between the facts of a case before it and the facts of a previous case, it may distinguish the cases and avoid applying the ratio decidendi of the earlier case.
- **Overruling a Precedent** - A higher court can overrule a precedent set by a lower court or even by itself in an earlier decision. This is typically done when the earlier decision is considered to be wrong or outdated.
- Some factors to consider when identifying the ratio include material facts, legal principles and reasoning.

vii. African or Primitive System:

African or primitive legal systems offer valuable insights into the evolution and development of modern legal systems.

- **Oral Tradition and Legal Precedent** - Many African legal systems relied heavily on oral tradition to transmit legal norms, customs, and precedents. This oral tradition, while distinct from the written tradition of Western legal systems, highlights the importance of oral testimony and storytelling in legal proceedings. Also, customary law, rooted in tradition and social norms, played a significant role in shaping legal decisions.
- **Consensus-Based Decision-Making** – these often-emphasized consensus-based decision-making, involving the entire community in resolving disputes. This participatory approach contrasts with the adversarial nature of many Western legal systems. Mediation and reconciliation were also preferred methods of dispute resolution, aiming to restore harmony within the community.
- **Holistic Approach to Justice** - African legal systems often considered the social, spiritual, and emotional dimensions of a dispute. This holistic approach to justice differs from the more formal and technical approach of Western legal system. The focus on restoring harmony and repairing relationships is a key feature. This concept is gaining traction in modern legal systems, particularly in juvenile justice and criminal justice reform.

- **Flexibility and Adaptability –** These were flexible and adaptable, evolving to meet the changing needs of society. This contrasts with the more rigid and formal nature of Western legal systems. Customary law is constantly evolving, reflecting changes in social norms and values. This dynamic nature of customary law is relevant to modern legal systems, which must also adapt to changing societal needs.

It gains valuable insights into the development of more just, equitable, and effective legal systems. By incorporating elements of these traditional systems, modern legal systems can strive to be more responsive to the needs of diverse communities and promote social harmony.

viii. Precedent

Precedent is a legal principle or rule established in a previous legal case that is either binding on a court or other tribunal when deciding subsequent cases with similar legal issues. It is a cornerstone of common law systems.

Features of Precedent:

- **Stare Decisis**: This Latin principle means "to stand by things decided." It's the doctrine that obligates courts to follow established legal principles from prior cases.
- **Binding Precedent**: Decisions from higher courts are binding on lower courts within the same jurisdiction. Lower courts must follow the legal principles established in these decisions.
- **Persuasive Precedent**: Decisions from courts in other jurisdictions or from lower courts can be persuasive but not binding. They can influence a court's decision but are not mandatory to follow.

In essence, precedent provides a framework for legal decision-making, ensuring consistency, fairness, and predictability in the application of the law.

ix. Methods of Research:

Research methods are the specific techniques, procedures, and tools used to collect, analyse and interpret data. These methods are essential in various fields, including social sciences, natural sciences, and humanities.

Major Research Methods includes:

- Quantitative Research:

- Qualitative Research:
- It also includes various research designs
    1. Experimental Design
    2. Quasi experimental design
    3. Correlation design
    4. Survey design
    5. Case study design
    6. Action research design

The research design outlines the overall strategy for conducting a research study.

Through these research methods researchers can conduct rigorous and meaningful studies that contribute to knowledge and address real-world problems.

x. Essentials of Customs:

Custom is a source of law which are longstanding practices that have evolved over time and are accepted as binding rules of conduct within a particular community.

Essentials of customs:

- **Immemorial Antiquity** - The custom must have been practiced for a long time, beyond living memory. This ensures that it has been established and accepted over generations.
- **Certainty** - The custom must be clear, definite, and free from ambiguity. It should not be vague or uncertain, as this would lead to confusion and inconsistency in its application.
- **Reasonableness** - The custom must be reasonable and not contrary to public policy, morality, or the law of the land. It should not be oppressive, discriminatory, or harmful to society.
- **Continuous Usage** - The custom must have been continuously observed without interruption. Any significant break in the practice may weaken its validity.
- **Universality** - The custom must be generally observed by the community or a specific group within the community. It should not be the practice of a few individuals.
- **Consistency** - The custom must be consistent with other customs and legal principles. It should not conflict with established laws or other customs.

In essence, customs are not static. They can evolve and adapt over time, as long as they continue to meet the essential criteria. However, if a custom becomes outdated or harmful, it may lose its legal force. They play a significant role in shaping legal systems, particularly in societies with strong cultural and historical traditions.

xi. Case Study:

A case study is an in-depth examination of a specific subject, such as a person, group, place, event, organization, or phenomenon. It involves collecting and analysing data to understand the complexities of the subject under investigation.

Features of Case Studies:

- **In-depth Exploration** – It helps to go deep into the subject matter, exploring its various aspects and dimensions.
- **Contextual Analysis** - It emphasizes the importance of understanding the context in which the subject exists. Researchers consider the historical, social, cultural, and other relevant factors that influence the subject.
- **Real-world Focus** – It often involve real-world situations and real-world data, making them highly relevant and applicable to practical problems.
- **Multiple Data Sources** - Researchers may use a variety of data sources, such as interviews, observations, documents, and surveys, to gather comprehensive information.
- **Rich Description** - Case studies provide detailed descriptions of the subject, including its characteristics, behaviours, and relationships.
- **Interpretation and Analysis** - Researchers analyse the collected data to identify patterns, draw conclusions, and develop insights.

It not only helps the researchers but also everyone who is digging things up about any subject, it makes the case studies even unique that it provides sufficient and deep information related to concerned topics and subjects.

xii. American Legal System

The American legal system is a complex blend of common law, statutory law, and constitutional law. It is a system that has evolved over centuries, influenced by English common law and the unique historical and political context.

Features of the American Legal System:

- **Adversarial System** - Legal disputes are resolved through a contest between opposing sides, with a judge or jury acting as the impartial arbiter.
- **Jury Trials** - Many cases, especially civil and criminal cases, are tried before a jury of ordinary citizens.
- **Right to Counsel** - Individuals have the right to legal representation, especially in criminal cases.
- **Separation of Powers** - The government is divided into three branches - legislative, executive, and judiciary.
- **Checks and Balances** - Each branch of government has the power to limit the power of the other two.

The American legal system is constantly evolving, adapting to new challenges and societal changes. It is a complex system that balances individual rights, societal needs, and the rule of law.

xiii. Action Research:

Action research is a collaborative approach to inquiry and learning that involves practitioners in systematically investigating and addressing problems or issues within their own practice. It is a cyclical process that involves planning, acting, observing, and reflecting on the outcomes of actions taken.

Features of Action Research:

- **Collaborative** - Action research is often conducted by a group of individuals working together to address a shared concern.
- **Reflective** - It involves critical reflection on practice to understand its strengths and weaknesses.
- **Contextual** - Action research is grounded in specific contexts and situations.
- **Transformative** - It aims to improve practice and bring about positive change.

Cycle of Action Research:

- Plan is to identify a problem or issue to be addressed, developing a plan for action, and collect baseline data.
- Act is the implementation of the planned interventions or strategies.
- Observation is the collection of data on the outcomes of the actions taken.

- Reflect is the analysis of the data, evaluation of the impact of the actions and identification of lessons learned.

Action research is a powerful tool for improving practice and bringing about positive change. The cyclical process of planning, acting, observing, and reflecting, practitioners can gain valuable insights and develop innovative solutions to complex problems.

List of cases

1. Waman Rao v. Union of India, (1981) 2 SCC 362
2. Donoghue v. Stevenson, [1932] AC 562
3. B. Shama Rao v. UT of Pondicherry, 1967 SCR (2) 650
4. Sarwan Singh Lamba v. Union of India, 1995 SCC (4) 546
5. Brown v. Board of Education, 347 U.S. 483 (1954)
6. Kesavananda Bharati v. State of Kerala, AIR 1973 SUPREME COURT 1461
7. Mohd. Ahmed Khan vs Shah Bano Begum and Ors, AIR 1985 SUPREME COURT 945
8. Minerva Mills Ltd. v. Union of India, 1981 SCR (1) 206
9. Guruswamy Raja vs. Perumal, AIR 1929 MAD 815
10. Mathura Naikin vs. Esu Naikin, (1912) 14 BOM LR 1129
11. R v. Judge of the City of London Court, [1892] 1 QB 273
12. Kerala v. Mathai Verghese and others, 1987 AIR 33 SCR(1) 317
13. R v. Sigsworth, [1935] Ch 89
14. Smith v. Hughes, 1960 WLR 830
15. Ishwari Khaitan Sugar Mills v. State of Uttar Pradesh, 1980 SCR (3) 331
16. Fothergill v. Monarch Airlines Ltd, [1980] 2 All ER 696
17. A.G. v. Prince Ernest Augustus of Cumberland, [1957] 1 All ER 49; [1957] A.C. 436
18. Inland Revenue Commissioners v. Frere, 1964 3 WLR 1193
19. Grey v. Pearson, (1857) 10 ER 1216
20. R v. Allen, (1872) LR 1 CCR 367
21. Re. Sigsworth: Bedford v. Bedford, 274 S.W.2d 528 (1954)
22. Madan Lal v. Changdeo Sugar Mills, 1962 SCR SUPL. (3) 973
23. Becke v. Smith, (1836) 2 M & W 191
24. Matteson v. Hart, 139 E.R. 147 (1854)
25. Newspaper Ltd. v. State Industrial Tribunal, AIR 1957 SUPREME COURT 532
26. Christopher v. Lotinga, 143 E.R. 1003 (1864)
27. Vacher v. London Society of Compositors, 1912 UKHL 3
28. Cooke v. Charles A Vageler, [1900] UKHL J1214-1
29. Narendra Kiadivalapa v. Manikrao Patil, [1977] INSC 152

30. Annapurna Biscuit Manufacturing Co. v. Commissioner of Sales Tax, U P, 1982 SCR (1) 149
31. Fitzpatrick v. Sterling Housing Association Limited, 1999 UKHL 42
32. Smith v. Hughes, [1960] 1 WLR 830
33. Kanwar Singh v. Delhi Administration, AIR 1965 SC 871
34. Regional Provident Fund Commissioner v. Sri Krishna Manufacturing Company, AIR 1962 SC 1526
35. Abley v Gale, 20 L.J.C.P (N.S) 233 (1851)
36. Arul Nadar v. Authorised Officer, Land Reforms (1998) 7 SCC 157
37. Corporation of City of Nagpur v. Employees AIR 1960 SC 675
38. Keshavnanda Bharti v. State of Kerala, (1973) 4 SCC 225
39. Bengal Immunity Co. Ltd. V. State of Bihar, A.I.R.1955 S.C.661
40. All saints High School Hyderabad & others Vs. Government of Andhra Pradesh, 1980 SCR (2) 924
41. Duport Steels Ltd. V Sire, (1980) 1 All E.R. 527, 541
42. FISHER V. BELL, [1961] QB 394
43. P.V. Narsimha Rao v. State AIR 1998 SC 2120
44. Maqbool Hussain v. State of Bombay, AIR 1953 SUPREME COURT 325
45. State of Kerala v. Mathai Verghese and others, 1987 AIR 33 SCR(1) 317
46. Unni Krishnan, J.P. and ors., etc. v. State of Andhra Pradesh and ors., AIR 1993 SUPREME COURT 2178
47. Smt. Rani Kusum vs Smt. Kanchan Devi And Ors., AIR 2005 SUPREME COURT 3304
48. Gajre v Pathankhan, (1970) 2 SCC 717
49. D.K. Basu v. State of West Bengal, [(1997) 1 SCC 417; AIR 1997 SC 610; 1996 (9) SCALE]
50. Geeta Hariharan v. Reserve Bank of India, [AIR 1999 SC 1149: (1999) 2 SCC 225]
51. Vishakha v. State of Rajasthan, [AIR 1997 SC 3811 FT 1997 (7) SC 184]
52. People's Union for Civil Liberties v. Union of India, [AIR 1997 SC 568 (1997) 1 SCC 301]
53. Air India v. Nargesh Mirza, [AIR 1981 SC 1829 : (1981) 4 SCC 335]